# SUPREME COURT OF THE UNITED STATES.

## No. 144.

JOSEPH & JACOB CHAMBERLIN, APPELLANTS,

vs.

ROBERT HEATH, SURVIVING PARTNER OF S. HEATH & CO., AS AGENT OF THE REPRESENTATIVES OF S. HEATH, DECEASED, AND IN HIS INDIVIDUAL CAPACITY.

ON APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR EAST LOUISIANA.

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Be it remembered, that on the 2d day of May, A. D. 1842, the complainant, Robert Heath, came into court, by Messrs. Elmore & King, his solicitors, and filed the following bill in equity, to wit:

To the hon'le the judges of the circuit court of the United States in and for the ninth judicial circuit, holding sessions in and for the eastern district of Louisiana. In equity:

Humbly complaining, your orator, Robert Heath, an alien, being a citizen of England, in the kingdom of Great Britain, and a subject of her majesty, Queen Victoria, in his individual capacity, and as surviving partner of the late firm of S. Heath & Co., and as agent of representatives of S. Heath, deceased, who composed, with complainant, the firm of S. Heath & Co., the said representatives being Mary Heath, senior, Henry Heath, Edward Heath, Mary Heath, jr., Fanny Heath, J. R. Masterman, wife of John Masterman, John C. Heath, Ellen Heath, George Heath, and William Heath, who, together with the complainant, are the heirs of the said S. Heath, deceased, and who are all aliens and subjects of Queen Victoria, in the kingdom of Great Britain, sheweth to this hon. court, that, as surviving partner of the said firm of S. Heath & Co., he brought suit in the United States circuit court, in and for the eastern district of Louisiana, against True Gilman Chamberlain, who is a citizen of the State of Louisiana, and recovered judgment for the sum of four thousand five hundred and six dollars and eighty-four cents, a copy of which judgment is hereunto annexed, as part of this bill; that, upon the said judgment, execution was issued, and levied by the marshal of this court, upon the property of said True Gilman Chamberlain, to wit, on the goods in his store on Magazine street.

He further sheweth, that also, in the parish court of the parish of Orleans, in the State of Louisiana, he instituted suit against the said True Gilman Chamberlain, and obtained judgment for the sum of four thousand one hundred and seventy-five $\frac{38}{100}$ dollars, and costs and interest—a copy of which said judgment is hereunto annexed, as part of this bill; that, for the debt due on said judgment, he is entitled to the vendor's privilege, upon the price brought at the marshal's sale, for the goods mentioned in the list hereunto annexed, and marked A; that the marshal sold the goods separately, so that the price can be identified. He is, therefore, entitled to be paid the amount the said goods brought in preference to all other creditors.

Now your orator charges, that the said True Gilman Chamberlain, fraudulently contriving with J. C. Chamberlain and J. Chamberlain, who are both citizens of the State of New York, and are merchants there, trading under the style and firm of J. & J. Chamberlin, in the city of New York, but who are now believed to be within the jurisdiction of this court, through the presence, in this city, of J. Chamberlain, a member of said firm, and with one Joseph Chamberlain, who is a citizen of the State of New York, and with one Moses Chamberlaine, who is a

citizen of the State of Missouri, residing in St. Louis, did agree, with all and each of the said parties, with a view of defrauding the complainant, to suffer, permit, aid, and abet them, and each of them, in obtaining judgments against him, to wit: He did so agree with the said J. & J. Chamberlain, by means of which said agreement they did obtain a judgment in their favor against him in the circuit court of the United States for the ninth judicial district court, holding sessions in and for the eastern district of Louisiana, for the sum of six thousand and forty-three dollars and forty-six cents, with interest and costs. Complainant further charges that in the same court, and in the like manner, the said Moses Chamberlain did obtain a judgment for the sum of fifteen thousand five hundred dollars, with interest and costs.

He further charges, that in the same court, and in like manner, the said Joseph Chamberlain did obtain judgment against the said True Gilman Chamberlain for the sum of one thousand eight hundred and eighty-seven dollars and twenty-three cents, with interest and costs; that upon the judgments obtained, as before stated, each of the said parties caused an execution illegally to issue upon their respective judgments, and caused the property of the said True Gilman Chamberlain to be seized and sold, to wit, the property in the store of the said True Gilman Chamberlain in Magazine street, being the same property that was seized on complainant's execution; that the said property has been sold by the marshal, and the proceeds of the sale, amounting to the sum of four thousand six hundred dollars and nineteen cents, are now in the hands of said marshal, and are about to be paid over to the said J. & J. Chamberlaine and the said Moses Chamberlaine, and the said Joseph Chamberlain, on their said fraudulent executions and judgments.

Complainant avers that none of the said parties are entitled to the said proceeds; that at the time the said J. & J. Chamberlain, and the said Moses Chamberlain, and the said Joseph Chamberlain, obtained their respective judgments, the said T. G. Chamberlaine was in insolvent circumstances, and had been for a long time previous thereto; that his insolvency was well known to each and all of the said parties; that they well knew their judgments were for a much larger sum than the said T. G. Chamberlain could pay, or than his property would sell for. That the said judgments were obtained by the said parties, by agreement with the said T. G. Chamberlain, with his consent and co-operation, for the purpose of enabling them to be paid by preference to the complainant and other creditors, out of the property of the said T. G. Chamberlain, and to prevent the complainant and other creditors from having a recourse to the property of the said debtor for the payment of their debts; that this was a fraud upon the rights of the complainant and other creditors.

Complainant alleges, that by reference to the records of said fraudulent suits, it will appear that the petitioners in the cases of Joseph Chamberlaine and J. & J. Chamberlain, were filed on the fifteenth day of January last; that on the same day service thereof was accepted, an answer filed, a trial gone into by consent, and judgments rendered; that the petition of Moses Chamberlain was filed on the seventeenth day of

January, and judgment obtained in the same manner; that executions issued in all these cases, before the lapse of the two days prescribed by law; that Alfred Hennen, esquire, was counsel for the plaintiffs in all these cases, and that B. W. Godfrey, esq'r, signed the answers of the defendant, as counsel; that said Godfrey is a young gentleman who had been but recently admitted to the bar, and had never been sworn in as a counsellor at law in this court, until the day he appeared as counsel for the defendant; that he studied law with the said Hennen, esquire, and was at the time occupying the same tenement with the said Hennen, esq.

He further alleges that the said Godfrey, esq., was engaged at the instance of the said plaintiff's counsel, and for the purpose of facilitating them in obtaining the said fraudulent judgments, and for the purpose of making them appear to have a legal form; that the said J. & J. Chamberlain, the said Joseph, and the said Moses Chamberlain, and the said T. G. Chamberlin, are brothers; that they all combined together, and contrived these fraudulent judgments, as the means of preventing the complainant and other creditors from having any opportunity of making their debts out of the property of the said T. G. Chamberlain, and for the purpose of giving themselves an unjust preference over the other creditors of the said T. G. Chamberlaine.

Complainant avers, that on account of the premises, the said judgments are, all of them, illegal and void; that the said parties to them have no rights, under them, or under the executions issued on them; that he has no adequate remedy at law; wherefore he prays to be admitted to file this bill in equity.

And he further prays, that the said J. & J. Chamberlain, the said Joseph Chamberlain, and the said Moses Chamberlain, and the said T. G. Chamberlain, be duly cited to answer this bill, according to the practice in this court; and that if the said parties, or any of them, be not found in the eastern district of Louisiana, then that service be made on them through their counsel, Alfred Hennen, who represented them in obtaining the said fraudulent judgments; and that after all due proceedings had, that the said judgments, to wit, the judgment in favor of J. & J. Chamberlain against T. G. Chamberlain, the judgment in favor of Joseph Chamberlain against T. G. Chamberlain, and the judgment in favor of Moses Chamberlain against T. G. Chamberlain, all obtained in the circuit court of the United States, for the ninth judicial circuit, holding sessions in and for the eastern district of Louisiana, be declared illegal and void, so far as they effect the rights of the complainant; and that it be further decreed, that the said parties are not entitled to the money now in the hands of the marshal, and that the said money be distributed as law and equity may require. And in order to prevent the said parties from reaping the benefits of their frauds, and for the purpose of preserving the rights of the complainant, that the marshal of this court be enjoined from paying over the said money, now in his hands as above stated, to the said J. & J. Chamberlain, or to the said Moses Chamberlain, or to the said Joseph Chamberlain, upon the executions obtained by them, obtained, as above stated, in the United States circuit court, in and

for the eastern district of Louisiana, against the said T. G. Chamberlain, or to either or any one of the said parties, until the further order of this court rendered in this case. And your orator further prays for such other orders and decrees herein, as the nature of the case may require, and the equitable powers of this court may grant. And, as in duty bound, your orator will ever pray, &c.

Signed, R. HEATH.

Sworn to and subscribed before me, this 30th day of April, 1842.

Signed, THEO. H. McCALEB,
*U. S. Judge.*

Signed, ELMORE & KING,
*Sols. for plaintiff.*

*Marked A.*

Goods sold by the marshal in the suits of J. & J. Chamberlain vs. Chamberlain, Moses Chamberlain vs. T. G. Chamberlain; on the proceeds of said [sale,] of which sale R. Heath claims the vendor's privilege for the price brought by the following twelve cases, to wit: one marked [T] G. C., 60; another marked [T] G. C. & Co., L. A., 20; 2 others marked [†] G. C. & Co., one No. 37, and the other No. 42; another marked [0] H. & Co., 17; another marked [I] G. C. & Co., No. 9; another marked T. G. C. & Co., 17; three others marked T. G. C., No. 12, 31, & 38; another marked [B] T. G. C. & Co., No. 14; and another marked [C] No. 120. The above goods were sold by the marshal, and the proceeds are now in his hands.

STATE OF LOUISIANA,
*Parish court for the parish and city of Orleans:*

ROBERT HEATH, vs. T. G. CHAMBERLAIN. } No. 14,887.

I hereby certify, that on the 25th January, 1842, judgment was entered in this court, in the suit of Robert Heath vs. T. G. Chamberlain, in the words and figures following to wit: This cause was this day taken up before the court, A. Hennen, esq., for plaintiff, B. W. Godfrey, esq., for defendant. The signatures being not denied in the answer, and the plaintiff acknowledging to have received, at two different periods, $213 $\frac{62}{100}$, on account of the notes sued on, it is ordered, adjudged, and decreed, that said plaintiff recover from True Gilman Chamberlain the sum of four thousand one hundred and seventy-five $\frac{38}{100}$ dollars, ($4,175 $\frac{38}{100}$,) with interest at the rate of ten per cent. per annum, until paid, as follows, viz: on $512 $\frac{50}{100}$, from the 4th April, 1841, until the 4th of June, 1841, at which time a sum of $113 $\frac{62}{100}$ was paid on account of said note, and on *on* $398 $\frac{88}{100}$, from the said 4th of June, 1841, until paid; on $520 $\frac{82}{100}$ from the 4th of June, 1841; on $525, from the 4th of July, 1841; on $524 $\frac{52}{100}$, from the 4th of August, 1841, until the 17th of August, 1841, at which time a sum of $100 was paid on account of

said note; and on $424 $\frac{52}{100}$, from the said 17th August, 1841, until paid; and on $1,984 $\frac{79}{100}$, from 27th of January, 1841, with costs of suit.

*New Orleans, January 29th*, 1842.

Signed, CHARLES MAURIAN,
*Judge.*

Judgment recorded in judgment docket D, page 208.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, on this 30th [SEAL.] day of April, in the year of our Lord 1842, and in the sixty-sixth year of the independence of the United States.

Signed, LOUIS R. COMTEN,
*D. Clerk.*

UNITED STATES CIRCUIT COURT,
*Ninth circuit and eastern district of Louisiana:*

TUESDAY, *25th January*, 1842.

The court met pursuant to adjournment. Present the hon'ble Theo. H. McCaleb, district judge. The hon'ble John McKinley, presiding judge, absent.

S. HEATH & Co.
vs. } No. 896.
T. G. CHAMBERLAIN.

This cause came on this day for trial by consent, Alfred Hennen, esq., appearing for the plaintiffs, and B. W. Godfrey for the defendants, when the plaintiffs having fully made out their case, it was considered by the court that judgment be entered up in favor of the plaintiffs, S. Heath & Co., and against the defendant, True Gilman Chamberlain, for the sum of four thousand five hundred and six dollars and eighty-four cents, with interest of ten per centum per annum, upon six hundred and thirty-two dollars and twenty-six cents thereof, from the sixteenth day of December, eighteen hundred and thirty-nine; upon nine hundred and ten dollars and ninety-five cents thereof, from the first day of December, eighteen hundred and thirty-nine; upon nine hundred and three dollars and eighty-seven cents thereof, from the nineteenth day of November, eighteen hundred and thirty-nine; upon twelve hundred and forty-nine dollars and fifty-six cents thereof, from the fifteenth day of October, eighteen hundred and thirty-nine; upon eighteen hundred and ten dollars and twenty cents thereof, from this first day of October, eighteen hundred and thirty-nine, until the first day of July, eighteen hundred and forty-one; and upon eight hundred and ten dollars and twenty cents, from the first day of July, eighteen hundred and forty-one, until paid; for six dollars, cost of protest and costs of suit.

Judgment entered, 25th January, 1842.

Judgment signed, 29th January, 1842.

Signed, THEO. H. McCALEB,
[SEAL.] *U. S. Judge.*

*Clerk's Office, circuit court of the United States,*
*Eastern district of Louisiana.*

I hereby certify the foregoing to be a true copy from the original, of record in this office.

Witness my hand, and the seal of said court, at the city of New Orleans, this 29th day of April, 1842.

Signed, DUNCAN N. HENNEN, *Clerk.*

And on the 30th April, 1842, the following entry was entered of record, to wit:

R. HEATH,
vs.
J. & J. CHAMBERLIN and als.

SATURDAY, *April 30th*, 1842.

On motion of Elmore & King, of counsel for the complainants, and on reading the bill of complaint, ordered, that the defendants show cause, on Monday next, at ½ past nine o'clock, A. M., why an injunction should not be granted in this case as prayed for.

And on the 2d of May, 1842, the following entry was entered of record, to wit:

R. HEATH,
vs.
J. & J. CHAMBERLIN and als.

MONDAY, *May 2d*, 1842.

In this case due notice having been given of the application for an injunction to be granted in this case, and no cause being shewn, it is ordered by the court, that the injunction issue, as prayed for, on the complainant's giving bond with good security, conditioned according to law, in the sum of two thousand dollars.

And on the 2d day of May, in the year of our Lord one thousand eight hundred and forty-two, the following subpœna in chancery was issued:

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, greeting:

You are hereby commanded to summon J. & J. Chamberlin, T. G. Chamberlain, Moses Chamberlin, and Joseph Chamberlin, to appear before the honorable the judges of the ninth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of June, 1842, then and there to answer a bill in chancery filed against them, wherein Robert Heath is complainant, and the said J. & J., T. G., Moses, and Joseph Chamberlin, are defendants. Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, this 2d day of May, in the year of our Lord one thousand eight hundred and forty-two, and the sixty-six[th] year of the American independence.

[SEAL.] DUNCAN N. HENNEN, *Clerk.*

*Marshal's Return.*

Received May 2d, 1842, and on the same day I served a copy of the within summons on Jacob Chamberlin, by handing and reading the same to him in person at New Orleans. And on the 3d day of the same month I served a copy of the within summons on True Gilman Chamberlin, by handing and reading the same to him in person at New Orleans.

For A. S. ROBERTSON, *U. S. Marshal.*
J. P. WALDEN, *D'y U. S. Marshal.*

Received May 2d, 1842, and after diligent search and enquiry I could not find the within named Moses Chamberlin and Joseph Chamberlin.

For A. SIDNEY ROBERTSON, *U. S. Marshal,*
J. P. WALDEN, *Deputy U. S. Marshal.*

And on the 2d of May, 1842, the following demurrer was filed:

In the circuit court of the United States, ninth circuit and eastern district of the State of Louisiana, sitting in chancery.

ROBERT HEATH, for himself and others,
vs.
J. & J. CHAMBERLIN & ALS.

Demurrer of Jacob Chamberlin and True G. Chamberlin.

These defendants, Jacob Chamberlin and True G. Chamberlin, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true, in such form and manner as the same are therein stated and alleged, demur thereto, and for cause of demurrer shew, that the said complainant hath not by his said bill made such a case as entitles him, in a court of equity, to any discovery from these defendants, or any relief against them, as to the matters contained in the said bill, or any of such matters; and that any discovery which can be made by these defendants, touching the matters complained of in the said bill, or any of them, cannot be of any avail to the said complainant, for any of the purposes for which a discovery is sought against these defendants, nor entitle the complainant to any relief in this court, touching any of the matters therein complained of. Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants demur thereto, and pray the judgment of this honorable court, whether they shall be compelled to make any other or further answer to the said bill; and humbly pray to be hence dismissed, with their reasonable costs in this behalf expended.

(Signed,) A. HENNEN, *Sol'r*
*for def'ts, Jacob and J. J. Chamberlain.*

And on the second of May, 1842, the following entry was entered on the chancery rule docket:

R. HEATH,
vs.
J. & J. CHAMBERLAIN, and als.

Demurrer of Jacob and True G. Chamberlain, filed this May 2nd, 1842.

And on the 3rd of May, 1842, the following bond for injunction was issued:

ROBERT HEATH,
vs.
J. & J. CHAMBERLIN, et als. } No. 956.

Know all men by these presents: That we, Robert Heath as principal, and J. L. Addison as surety, are held and firmly bound, jointly and severally, unto J. & J. Chamberlin, Moses Chamberlin, Jacob Chamberlin, and True G. Chamberlin, in the sum of two thousand dollars, lawful money of the United States of America, to be paid to the said J. & J. Chamberlin, Moses Chamberlin, Jacob Chamberlin, and True G. Chamberlin, heirs, executors, administrators and assigns; for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the second day of May, in the year of our Lord one thousand eight hundred and forty-two. Whereas, the above bounden Robert Heath has this day presented a bill to the honorable the circuit court of the United States, for the ninth circuit, holding sessions in and for the eastern district of Louisiana, praying a writ of injunction to the marshal of the said court, from paying over the amount of monies received by said marshal, under a writ of fieri facias, issued at the suits of J. & J. Chamberlin vs. T. G. Chamberlin. Now, the condition of the above obligation is, that we, the above bounden Robert Heath and J. L. Addison, will well and truly pay to the said J. & J. Chamberlin, Moses Chamberlin, Jacob Chamberlin, and J. G. Chamberlin, the defendants in said bill, all such damages as they may recover against us, in case it should be decided that the said injunction was wrongfully obtained.

(Signed,) R. HEATH, [L. S.]
J. L. ADDISON. [L. S.]

Signed, sealed, and delivered, in the presence of—
DUNCAN N. HENNEN.

And on the 3d of May, 1842, the following writ of injunction was issued:

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby enjoined and strictly commanded, that you desist from paying over the amount of monies received by you, under the writ

of fieri facias issued from the circuit court of the United States, for the ninth circuit and eastern district of Louisiana, issued at the suits of J. & J. Chamberlin, Moses Chamberlain, and Jacob Chamberlin, vs. T. G. Chamberlin, until the further order of said court; and what you do in the premises, that you will make due return according to law.

Witness the hon'ble Roger B. Taney, chief justice of the Supreme [SEAL.] Court of the United States, this third day of May, 1842.

(Signed,) DUNCAN N. HENNEN, *Clk.*

*Marshal's Return.*

Received May 3d, 1842, and on the same day I served a copy of the within injunction on A. S. Robertson, marshal, in person, at New Orleans.

(Signed,) J. P. WALDEN, *D. M.*

(1) Marshal's return read in evidence and filed, June 24th, 1843, in the trial of the suit No. 956, by complainants.

*Answer filed May 31st*, 1842.

R. HEATH, et als.,
vs.
J. & J. CHAMBERLAIN, et als. } In chancery.

To the honorable the judges of the circuit court of the United States, for the ninth judicial circuit and eastern district of Louisiana, in chancery sitting:

The answer of Jacob Chamberlain, and of the commercial firm of J. & J. Chamberlin, of New York, of which firm he, the said Jacob, is one, to the bill of complaint herein filed, respectfully sets forth, that these respondents, by protestation, not confessing any of the facts in said bill set forth to be true, in the manner therein set forth, do for themselves allege and say, as follows:

That it may or may not be true, as stated in said bill, that the complainants did recover the judgment therein named, but inasmuch as these respondents were not then advised of such facts, they ought not to be held either to admit or deny the same.

That these respondents pronounce as untrue and unfounded the allegations that they combined, confederated, or colluded with the said True G. Chamberlain, named in said bill, or with one Moses Chamberlain, for the purpose of defrauding the complainants, or any one of them, or any other person or persons whatsoever, by obtaining a judgment in their favor against the said True G. Chamberlain, for the sum specified in said bill; but they say that they did, on or about the 15th day of January last, obtain two certain judgments before the law side of this honorable court, one in favor of Joseph Chamberlain, for the sum of $1,887 $\frac{23}{100}$, as appears by the record of this honorable court, No. 892 of the law docket thereof, and the other in favor of J. & J. Chamberlain, for the sum of $6,043 $\frac{46}{100}$, as will appear from the said record, in the suit No. 981 of said docket; that said judgments were obtained, upon the pre-

sentation of legal causes of action by the plaintiffs therein, and after answers to the merits of the same had been filed in the court by the defendant therein, the said True G. Chamberlain, who insisted upon full proof being made of the justice and validity of the said claims, which being done by the plaintiffs, judgment was awarded in their favor by the honorable court; that neither of these respondents was then corporeally present in the State of Louisiana, but acted throughout by an attorney of this court, as appears by the said record.

That so far from their knowing that said True G. Chamberlain was in failing and insolvent circumstances, at any time previous to the rendition of said judgments, they were not suspicious of such a fact, nor were they aware that he was indebted in any manner to these complainants. In answer to the charge that said judgments were obtained by agreement and co-operation of said True G. Chamberlain, they aver the said allegations to be untrue, and refer the court to its own record, in the cases above named, as proof most ample and conclusive that the same is false and unfounded in fact. Respondents, in answer to the charge that the obtaining said judgments was a fraud upon the rights of complainants, and other creditors of the said True G. Chamberlain, do aver the same to be false, unfounded, and wholly unwarranted by the facts of the case; that in obtaining said judgments, they were enforcing, in a fair and legal manner, and before a tribunal having undoubted jurisdiction of the parties and subject matters of said suits, the collection of debts made and contracted by the said True G. Chamberlain, towards these respondents, for lawful and valuable considerations; that they pursued only the ordinary and prescribed forms for obtaining judgment in this court, and that the acceptance of service of the process in said cases, by the said True G. Chamberlain, was done of his own free will and accord, and not through the advice or procurement of these respondents, who, as before stated, were not then corporeally present in the State of Louisiana; neither did they advise or procure the said True G. to consent to a trial of said cases; as for what Moses Chamberlain, of St. Louis, may have done in the premises, these respondents are wholly ignorant, inasmuch as they have not seen the said Moses for several years, nor have they corresponded with him upon the subject of the indebtedness of the said True G. to the said Moses, or to the complainants, or to any other person or persons. From this statement, respondents presume that the court will immediately perceive the moral impossibility of the truth of the charge of thus confederating or combining with the said Moses to defraud these complainants in the premises. Respondents are informed, and believe, that it is not illegal for executions to issue within ten days after judgment obtained in this court; that if execution do issue within that time, it is a matter of which the defendant in execution can alone complain, and that parties who were not partners to the suit in which execution may have issued, cannot and ought not to be heard in opposition thereto. These respondents confess their surprise, that if the insolvency of said True G. Chamberlain was so notorious, as is represented in said bill, the complainants, one of whom they are informed and believe, has made the

city of New Orleans his permanent residence for several years past, should have been so negligent in the enforcement of the collection of the claims set forth in this said bill; and they respectfully ask of the court if the maxim that the "law favors the vigilant," is to be turned against themselves, and others who have made timely and proper use of its remedies, in favor of those who, by their own confession, have forfeited its protection by their supineness and negligence. Respondents admit that their attorney of record caused executions to issue upon the aforementioned judgments, in order to enforce the collection of the same, but as neither of them was corporeally present in the State of Louisiana, they cannot say under what circumstances, or instructions to the marshal of this court, such executions were issued. An examination of the record will however in their opinion, convince the court that the same were duly and legally issued, at least in so far as these complainants, and other persons not parties to the record of the said suits, were concerned. Upon the arrival in the city of New Orleans of the respondent, Jacob Chamberlain, he found the execution in the hands of the proper officer, and learned that the same had been levied upon the stock in trade of the said True G. Chamberlain, which was sold to satisfy the same, and the proceeds of which sale have, by the solemn and formal judgment of this honorable court, upon its law side, been adjudged as the lawful and rightful property of these respondents, and of no other person or persons whatsoever.

These respondents do deny expressly, that the executions aforesaid were levied upon the said stock in trade, for the purpose of defrauding the complainants, or any other person or persons, of the rights, liens, or privilege, which he or they might have upon the same, or might pretend to have thereon; but aver that the said levy was made and persisted in, for the purpose of securing their own legal claims, and for none other whatever; they certainly should not be held responsible, because True G. Chamberlain had or has not sufficient property to pay his debts; indeed, they suffer as much, or more, from this fact, as the complainants, as they remain creditors of the said True G. to a large amount, far exceeding the amount of their former judgments against him. Respondents admit that Alfred Hennen, esq., was their attorney of record in said suits; that he filed their petitions therein; they also learn from an inspection of the record, that B. W. Godfrey, esq., appeared as the attorney of the said True G. Chamberlain; one of them having seen Mr. Godfrey, admits, also, that he is a young gentleman, but avers his entire ignorance as to the time of his obtaining license to practice law, or of his being sworn as an attorney and counsellor of this court; neither can respondents answer as to the fact of his, the said Godfrey, having studied law with the said Alfred Hennen, inasmuch as they know nothing of his former life and pursuits; neither do they know that the said Godfrey occupied, at the time of his acting as counsel for the said True G. Chamberlain, the said tenement with the said Alfred Hennen; neither do they know that the said Godfrey was engaged, at the instance of their counsel, to facilitate him in obtaining said judgments; these respondents do allege, that so far as the allegations in this portion of the bill of complaint

go to fix upon them, individually, the stigma of engaging in a fraudulent combination with the said Godfrey, or with his client, the same are false, unfounded, and malicious, as they did never, themselves, engage the services of said Godfrey in said suits, *to* procure them to be engaged by others; they submit, however, that as a sworn and highly responsible officer of this court, the said B. W. Godfrey, esq., is not likely to have consented to be employed in a fraudulent suit, and that allegations against his professional integrity should be heard by its presiding officer, with the greatest caution, especially when they come, as in the present instance, from aliens, and subjects of a foreign government.

These respondents also admit that they are the brothers of the said True G. Chamberlain, and also of the said Moses Chamberlain, but they repel, as false, injurious, and malicious, the charge by complainants, that they combined with their said brothers, to contrive fraudulent judgments, as the means of preventing the complainants and the other creditors from an opportunity of making their debts out of the property of the said True G. Chamberlaine, or to procure an unjust preference for themselves upon said property. These respondents cheerfully leave to this honorable court the question, as to whether plaintiffs, in its own solemn judgments, are entitled to any privileges under the same, notwithstanding the bold and unqualified manner in which the complainants have, in their said bill, decided otherwise. Respondents allege, that if they are obnoxious to the charge of fraud, in obtaining their judgments against the said True G. Chamberlain, upon the grounds set forth in said bill of complaint, the complainants themselves have also been guilty of combination, confederation, and collusion with the said T. G. Chamberlain, to defraud his other creditors; and to support this allegation, they refer the court to its own record, in the suit of No. 896 of the docket, of its law side, where it appears, that on the 24th day of January last, these complainants, by their counsel, Alfred Hennen, esq., filed their petition against said True G. Chamberlain, who appeared, by the said B. W. Godfrey, as counsel, and filed an answer, denying the allegations of the plaintiffs' petition, and calling for strict proof thereof; that on the same 24th January, there was a trial, by consent, and judgment for plaintiffs; that on the day of January, the said True G. Chamberlain gave his written consent to the said judgment being signed before the legal delay, and that said judgment was, accordingly, so signed; and yet the said complainants have appeared before this honorable court of equity, and unblushingly stigmatized as fraudulent in others that course of conduct which they have not hesitated themselves to pursue. Respondents also call the attention of the court to the fact, that neither in the petition in said suit is privilege claimed, as following the debt upon which suit was brought, nor is any privilege granted by the judgment of the court thereon. Had the pretended liens and privileges really existed, on all, or any part of the stock in trade of the said True G. Chamberlin, in favor of the complainants, they had ample and adequate remedy at law to enforce the same; and there can be no question, that the courts of law would have enforced, in their favor, any and all rightful and legal liens

and privileges which they might have had thereon; the complainants having neglected the timely enforcement of such liens or privileges, have now vexatiously set the same up before a court whose rightful jurisdiction does not extend to such subjects, for the purpose of harrassing these respondents, and hindering and detaining them from the enjoyment of their just and legal rights; and these respondents deny that the said complainants have any such lien and privilege as they set forth in their said bill. And now, again protesting against all and every the allegations in said bill of complainants, which charge fraud, collusion, and combination upon these respondents, in the premises, with the said True G. Chamberlain, or with any other person or persons whatsoever, as false, malicious, unfounded, and vexatious, these respondents pray of this honorable court a decree, dismissing the said bill of complainants, dissolving the injunction hereinbefore granted, and condemning the said complainants in special damages, for illegally, unjustly, and vexatiously obtaining the same, and dismissing these respondents hence with their reasonable costs, and with such equitable relief as the nature of the case calls for.

Signed, ALFRED HENNEN,
GRYMES & CLAIBORNE.
*Solicitors and counsel for respondents.*

Jacob Chamberlain, for himself, and also for the firm of J. & J. Chamberlain, of New York, makes oath that the facts stated in the foregoing answer, so far as they are stated upon his own knowledge, are true; and that so far as they are made upon the knowledge of others, he believes them to be true.

Signed, JACOB CHAMBERLIN.

Sworn to, and subscribed before me, this 31st May, 1842.

Signed, DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *D. clerk.*

And on the 1st June, 1842, the following entry was entered of record to wit, Wednesday, 1st June, 1842.

HEATH, et als.
vs.
J. & J. CHAMBERLAINE, et als. } No. 956.

In equity, U. S. circuit court.

On motion of Grymes & Claiborne, solicitors and counsel for respondents, it is ordered, that the complainants do shew cause on Tuesday, the 7th of June, 1842, at ten o'clock, A. M., why the injunction herein specified should not be dissolved at their costs, upon the following grounds:

First. That the said injunction was obtained, without the shewing any legal or equitable grounds therefor.

2d. That the same is unnecessary and vexatious, and destructive of the legal and equitable rights of the respondents.

*Marshal's return.*

Received June 1st, 1842, and same day served a copy of the within on Elmore, esquire, in person, attorney for S. Heath.

For A. S. ROBERTSON, *U. S. M.*
W. K. STILES, *Deputy U. S. Marshal.*

And on the 6th June, the following entry was entered of record, to wit:

R. Heath vs. J. & J. Chamberlin, T. G. Chamberlin, Moses Chamberlin & Joseph Chamberlin. Fixed for trial on demurrer on Friday, 10th June.

And on the 7th June, 1842, the following entry was entered of record, to wit:

*Tuesday, June 7th,* 1842.

The rule taken in this case by defendants, to shew cause why the injunction should not be dissolved, came on this day for hearing, when afterwards it was argued by Elmore & King, esquires, for complainants, and by John Claiborne, esquire, for the defendants, the court took the same under consideration.

And on the 8th June, 1842, the following supplemental bill was filed:

To the honorable the circuit court of the United States, for the ninth judicial circuit, sitting in equity, in and for the eastern district of Louisiana.

Your orator, Robert Heath, humbly complaining, sheweth: that on the day of he filed in this honorable court a bill in equity against J. & J. Chamberlin, True Gilman Chamberlain, J. Chamberlain and Moses Chamberlain, alleging, that the said defendants had combined together for the purpose of defrauding the complainant by means of certain fraudulent judgments in favor of J. & J. Chamberlain, Moses Chamberlain and J. Chamberlain, against the said T. G. Chamberlain; that upon said fraudulent judgments, the said judgment creditors had caused executions to issue, and had caused the property of said T. G. Chamberlain to be seized, and that the same had been sold by the marshal of this court; that complainant was of right entitled to the said money, being a judgment creditor, and having seized the same property on an execution in his favor. The complainant prayed in said bill, that the said judgments be declared fraudulent and void; that the proceeds of the sale of T. G. Chamberlain's property be applied as law and equity directs, and that the marshal be enjoined from paying over the said proceeds to the said fraudulent judgment creditors; all of which will more fully appear from reference to the said bill now on file in said court; that the injunction was accordingly granted.

Complainant further alleges, that notwithstanding his said injunction, by some means or other, Alfred Hennen, esquire, has gotten into his possession a portion, to wit: about three thousand dollars of the money, the proceeds of the sale made by the marshal of the goods and effects of

the said T. G. Chamberlain, which your complainant alleges he has a right to, as is more fully set forth in his original bill. That J. & J. Chamberlain, the above mentioned fraudulent judgment creditors, are endeavouring by rules of court and other means, notwithstanding the injunction obtained in this case, to compel the said Hennen to pay over the said sum to the said J. & J. Chamberlain; whereas complainant alleges that he is of right and justice entitled to the same; that if the said money is paid over to the said J. & J. Chamberlain, or to any other of the said fraudulent judgment creditors, it will enable them to reap the benefits of their fraud, and will deprive the complainant of his just rights; that the injury to the complainant will be irreparable. Wherefore, complainant prays, that the said Alfred Hennen, esquire, be made a party to this proceeding, that he be cited to answer thereto, and that after all due proceedings had, that he be compelled to pay the said sum of three thousand dollars to the complainant, or in such manner as the court shall direct; and the complainant further prays, that the said Hennen be enjoined from paying over the said money to the said J. & J. Chamberlain, or to any other of the said fraudulent judgment creditors above mentioned, during the pendency of this suit; and for all other relief in the premises, &c.

(Signed,) R. HEATH.

Sworn to, and subscribed before me, this 8th day of June, 1842.

Signed, DUNCAN N. HENNEN, *Clerk*.
By H. B. PAGE, *Deputy Clerk*.

Signed, ELMORE & KING,
*Solicitors for plaintiff*.

*Judge's order.*

Let this amended bill be filed, and let an injunction issue, upon the complainant giving bond with one good security, in the sum of two thousand dollars.

Signed, THEO. H. McCALEB,
*U. S. Judge*.

And on the day of June, 1842, the following subpœna in chancery, was issued.

UNITED STATES OF AMERICA:

The President of the United States, to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon J. & J. Chamberlin, T. G. Chamberlin, Moses Chamberlin, Joseph Chamberlin and Alfred Hennen, to appear before the honorable the judges of the ninth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of July, then and there to answer a bill in chancery, filed against them, wherein Robert Heath is complainant, and the said J. & J. Chamberlin, T. G. Chamberlin, Moses Chamberlin, Joseph Chamberlin and Alfred Hennen, are defendants; herein fail not, and

have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, this the day of June, in the year of our Lord one thousand eight hundred and forty-two, and the sixty-sixth year of American independence.

Signed, DUNCAN N. HENNEN, *Clerk.*
[SEAL.] By H. B. PAGE, *Deputy Clerk.*

*Marshal's return.*

Received June 8th, 1842, and on the same day I served a copy of the within summons in chancery, on A. Hennen, esq., by reading and handing the same to him in person in New Orleans.

Signed, A. SIDNEY ROBERTSON, *U. S. M.*

Received June 8th, 1842, and on the 9th day of the month of June, I served a copy of the within summons in chancery, on Jacob Chamberlin, of the firm of J. & J. Chamberlin, by reading and handing the same to him in person at New Orleans.

For A. SIDNEY ROBERTSON,
*U. S. Marshal,*
J. P. WALDEN, *D. U. S. M.*

And on the 13th of June, 1842, the following entry was entered of record, to wit:

*Monday, 13th June,* 1842.

R. HEATH,
vs. } No. 956.
J. & J. CHAMBERLIN, and als.

The court having maturely considered the rule taken in this case, for complainants to shew cause why the injunction should not be dissolved, do now order that the said rule be dismissed at defendant's costs.

And on the same day the following entry was also entered of record, to wit:

R. HEATH,
vs. } No. 956.
J. & J. CHAMBERLIN and als.

On motion of Elmore & King, esquires, of counsel for plaintiff, and upon reading the return of the marshal to the subpœna directed in this case to Joseph Chamberlin and to Moses Chamberlin, and upon its being suggested that neither of said defendants reside within the jurisdiction of this honorable court, so that they may be personally served with process from this court, it is ordered by the court, that service of the said process be made upon Alfred Hennen, esquire, the attorney of record of the said defendants in the suits enjoined in this case, and was the counsel in obtaining the judgments sought to be annulled by this suit; and that process issue for this purpose, &c.

*Marshal's return.*

Received 13th June, 1842, and on the 14th June, 1842, served a copy of the within motion *of* A. Hennen, esquire, in person.

Signed, A. SIDNEY ROBERTSON, *U. S. M.*
By WM. K. STILES, *Dep. U. S. Mar.*

And on the same day the following entry was entered of record, to wit:

R. HEATH,
vs.
J. & J. CHAMBERLIN, and als.

On motion of Elmore & King, esquires, of counsel for plaintiff, and upon its being suggested, that by oversight they have omitted to sign the original and amended bills filed in this case, it is ordered by the court that they be permitted to sign as counsel the said bill.

The solicitors for complainant also made a further motion for judgment pro confesso against J. & J. Chamberlin and T. G. Chamberlin, and the court took the same under consideration.

*Replication, filed May 11th, 1843.*

To the honorable the judges of the circuit court of the United States, for the fifth judicial circuit, in and for the eastern district of Louisiana, sitting in chancery.

The replication of Robert Heath, complainant, to the answer of J. Chamberlin, and J. & J. Chamberlin, in the suit now pending in this honorable court against the said J. & J. Chamberlin, T. G. Chamberlin and Moses Chamberlin: this repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith: that he will aver and prove his said bill to be true, certain, and sufficient in law, to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that among other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he hath actually prayed, &c.

Signed, R. HEATH.

R. Heath being duly sworn, doth depose and say, that the matters and things as set forth in the foregoing replication, so far as they are derived from information from others, he believes them to be true.

Signed, R. HEATH.

Sworn and subscribed before me, this 11th May, 1843.

D. N. HENNEN, *Clerk.*
By H. B. PAGE,
*Deputy clerk.*

And on the 5th June, 1843, the entry was made in C. R. docket.

R. HEATH
vs.
J. & J. CHAMBERLIN, T. G. CHAMBERLIN, MOSES CHAMBERLIN, and JOSEPH CHAMBERLIN.

Taken for confessed against T. G. and Moses Chamberlin.

And on the 17th June, 1843, the following entry was entered on the C. R. D.:

R. HEATH
vs.
J. & J. & J. CHAMBERLIN et al.

For trial, Saturday, June 24th instant.

And on the 24th June, 1843, the following entry was entered of record, to wit:

SATURDAY, *June 24th*, 1843.

This cause came on for a hearing this day upon the bill; Elmore & King, esquires, appearing for the complainants, and J. R. Grymes, esq., and John Claiborne, esquire, for the defendants. Whereupon, after argument at some length, the cause was continued for further hearing, until Monday, the 26th instant, at 11 o'clock, A. M.

And on the 26th June, 1843, the following entry was entered of record, to wit:

MONDAY, *June 26th*, 1843.

R. HEATH
vs.
J. & J. CHAMBERLIN & als.

The hearing of this case, continued over from the 24th instant, was this day resumed by the court; whereupon, after considerable progress, the further consideration of the case was continued until to-morrow, the 27th inst., and 10 o'clock, A. M.

And on the 27th June, 1843, the following entry was entered of record, to wit:

TUESDAY 27th, 1843.

R. HEATH
vs.
J. & J. CHAMBERLIN & als.

The trial of this cause, upon the merits, which was continued from yesterday, was this day resumed before the court; Elmore and King, esquires, appearing for the complainants, and John Claiborne, esquire, for the defendants. Whereupon, after hearing the arguments of counsel, the court took the same under advisement.

*Testimony offered in evidence upon the hearing of the cause.*

ROBERT HEATH
vs.
J. & J. CHAMBERLIN & als. } No. 956.

United States circuit court, 5th circuit, and eastern district of Louisiana.

On the hearing of this cause, the complainant's solicitor offered the following documents in evidence:

1st. The record and proceedings in the suit of Joseph Chamberlin vs. T. G. Chamberlin, No. 892, 3 documents.

No. 2. The record and proceedings in suit No. 893, Moses Chamberlin vs. T. G. Chamberlin, 3 documents.

3. Record and proceedings in suit No. 891, J. & J. Chamberlin vs. T. G. Chamberlin, with the exception of the fi. fa. and return upon it, 15 documents.

4. Record and proceedings in suit No. 909, Cartledge & Co. vs. Chamberlin, 10 documents.

5th. Testimony of McMurdo and Fergusson, marked "A."

6th. Testimony of Fonarger and als., "B."

7th. " Robertson, "C."

8. The return of the marshal upon the injunction issued in this suit, 956, "D."

And the defendants offered in evidence—first, all the proceedings in suit No. 896, J. & J. Chamberlin vs. T. G. Chamberlin.

2. The marshal's receipt, to the reception of which solicitor for complainants objects.

H. B. PAGE, *Deputy clerk.*

June 24th, 1843.

*Further testimony offered by complainants on the 26th June*, 1843.

1st. Certificate of clerk of commercial court.

2nd. Admissions of defendants' counsel.

3rd. Statement of W. King, esquire.

JOSEPH CHAMBERLIN vs. T. G. CHAMBERLIN. } No. 892.

U. States ninth circuit court for the eastern district of Louisiana.

To the honorable the judges of the circuit court of the United States for the ninth circuit, eastern district of Louisiana.

The petition of Joseph Chamberlin, a citizen of the State of New York, and therein residing, respectfully shews: that True Gilman Chamberlin, a citizen resident of the State of Louisiana, and therein residing, is justly indebted to your petitioner in the sum of eighteen hundred and eighty-seven 93-100 dollars $1,887 23, as set forth in the annexed account, herwith filed for reference; which, though amicably requested, he has refused to pay. Wherefore, your petitioner prays that the said T. G. Chamberlin may be cited to appear and answer this petition, and may be condemned to pay to your petitioner the amount of said bill account, $1,887 23, with interest and costs.

Signed, A. HENNEN.
*Att'y for pet'r.*

Dolls. 650 00. NEW YORK, 23*d August*, 1841.

Two months after date, please pay to our own order the sum of six hundred and fifty dollars, for value received, and charge to account of your obedient servant,

(Signed,) J. & J. CHAMBERLIN.

To Messrs. T. G. CHAMBERLIN & Co.,
*New Orleans.*

Accepted, H. CHAMBERLIN & Co.

Dolls. 600 00. NEW YORK, 23*rd August*, 1841.

Four months after date, please pay to our own order the sum of six hundred dollars, for value received, and charge the same to account of your obedient servant,

Signed, J. & J. CHAMBERLIN.

To Mess. T. G. CHAMBERLIN & Co.,
*New Orleans.*

Accepted—signed, T. G. CHAMBERLIN & Co.

Dolls. 600 00. NEW YORK, 23*rd August*, 1841.

Three months after date, please pay to our own order the sum of six hundred dollars, for value received, and charge to account of your obedient servant,

(Signed,) J. & J. CHAMBERLIN.

To Messrs. T. G. CHAMBERLIN & Co.,
*New Orleans.*

Accepted—signed, T. G. CHAMBERLIN & Co.

DR. Messrs. T. G. Chamberlin & Co., in account current and interest with Joseph Chamberlin.

| | | | | |
|---|---|---|---|---|
| 1835. | | | | |
| Mar. 31 | To balance ac. rend. - - - - | $519 87 | 275 | $27 80 |
| May 30 | cash - - - - - - | 25 | | |
| June 21 | your accept'ce unpaid - - - | 200 00 | 195 | 7 58 |
| July 21 | cash - - - - - - | 143 85 | | |
| 31 | cash - - - - - - | 50 | | |
| Nov. 30 | cash - - - - - - | 19 | | |
| 1836. | | | | |
| Jan. 1 | your proportion sister's board, from 31st March to 1st Jan'y, 1836, *a* $1 67 p. w. - | 65 13 | 275 | 3 47 |
| | Interest - - - - | 38 85 | – | 38 85 |
| 1836. | | $968 64 | | |
| Jan. 1 | To bal. brot. down, 5 yrs. and 226 days - | 824 79 | 5 226 | 324 92 |
| April 30 | postages - - - - - | 25 | | |
| June 30 | your accept'ce unpaid, 5 yrs. and 45 days - | 200 00 | 5 45 | 71 75 |
| 1838. | | | | |
| Oct. 24 | paid sister's board, &c., 1,026 days - - | 10 22 | 1026 | 1 99 |
| Nov. 30 | postages, &c. - - - - | 75 | | |
| Dec. 31 | Do - - - - | 25 | | |
| 1839. | | | | |
| Sep. 15 | your proportion sister's board, from 1st January, 1836, to date, at $1 67 per week, 192 5-7 weeks, 700 days - - - | 321 83 | 700 | 438 21 |

ACCOUNT.—*Continued.*

| | | | | |
|---|---|---|---|---|
| 1841. Aug. 15 | To T. G. Chamberlin's proportion sister's board from 15th Sept., 1839, to 15th Sept., 1841, 2 years, 104 weeks, *a* 83⅓ *cts.* per week - | 86 66 | | |
| | Amount of int. to date - - | 442 48 | – | 442 48 |
| | | $1887 23 | | |
| 1841. Aug. 15 | To balance due this day - - - E. and O. E. | $1887 23 | | |
| | JOSEPH CHAMBERLIN, Per ROBERT PROTHEROT. | | | |
| | NEW YORK, 15*th August*, 1841. | | | |

Messrs. T. G. Chamberlin & Co., in account current and interest with Joseph Chamberlin, CR.

| | | |
|---|---|---|
| 1835. July 11 | By cash - - - - - - - - - | $143 85 |
| 1836. Jan'y 1 | By balance due 1st Jan'y, 1836 - - - - - | 824 29 |
| | | $898 64 |
| | E. O. E. JOSEPH CHAMBERLIN, Signed per GILBERT CHAMBERLIN. NEW YORK, 1*st January*, 1836. | |
| 1841. Aug. 15 | Due 15th August, 1841, by balance carried down - - | $1,887 23 |
| | | $1,887 23 |

*Answer filed January 15th*, 1842.

Circuit court of the United States, eastern district of Louisiana.

JOSEPH CHAMBERLIN
vs.
T. G. CHAMBERLIN.

T. G. Chamberlin, the defendant, denies all and singular the allegations of the petitioner—requires strict proof thereof, and prays to be hence dismissed with costs.

Signed, B. W. GODFREY,
*Att'y for defendant.*

This cause came on this day for trial, by consent; Alfred Hennen, esq., appearing for the plaintiff, and B. W. Godfrey, esquire, for the defendant; when, the plaintiff having fully made out his case, it was considered by the court that judgment be entered up in favor of the plaintiff, Joseph Chamberlin, and against the defendant, True Gilman Chamberlin, for the sum of eighteen hundred and eighty-seven dollars and

twenty-three cents, with interest of five per cent. per annum, from 15th day of January, 1842, until paid, and for costs of suit.

Judgment rendered January 15th, 1842.

Judgment signed January 22d, 1842.

Signed, THEO. H. McCALEB, *U. S. judge.*

*Fi. Fa. issued 28th January*, 1842.

Circuit court of the United States for the ninth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from True Gilman Chamberlin the sum of eighteen hundred and eighty-seven dollars and twenty-three cents, with interest of five per centum. from the fifteenth day of January, eighteen hundred and forty-two, until paid, and for costs of suit, clerk's fees, $21 66 cash, which Joseph Chamberlain lately recovered by judgment of the circuit court of the United States, for the ninth circuit, and eastern district of Louisiana, and if he shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said True Gilman Chamberlin, except slaves in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of the said True Gilman Chamberlin, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said True Gilman Chamberlin, in your district, whereof he was owner on the fifteenth day of January, 1842, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Joseph Chamberlin for the judgment aforesaid, on the seventeenth day from date hereof, together with this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme [L. S.] Court of the United States, this 28th day of January, A. D. 1842, and sixty-sixth year of the independence of the United States.

(Signed) DUNCAN N. HENNEN, *Clerk.*

*Marshal's return.*

Received, January 28th, 1842. No property found, notwithstanding a demand made of the parties.

For A. S. ROBERTSON, *Marshal.*
J. P. WALDEN, *Deputy Marshal.*

MOSES CHAMBERLIN, vs. T. G. CHAMBERLIN. } No. 893.

To the honorable the judges of the circuit court aforesaid for the eastern district of Louisiana, 9th circuit, U. S.

The petition of Moses Chamberlin, a citizen of the State of Missouri, therein residing, respectfully shews: that True Gilman Chamberlin, a

citizen of the State of Louisiana, eastern district of Louisiana, therein residing, is justly indebted to your petitioner in the sum of fifteen thousand five hundred dollars, $15,500, the amount of four promissory notes of hand, each for the sum of $3,875, dated 14th September, 1839, at New Orleans, payable to the order of your petitioner, at 6, 9, 12, and 18 months after date, for value received; which, when due, were not paid though the maker was thereunto amicably requested, as will more fully appear from the original notes annexed, to make part of this petition.

Wherefore your petitioners pray that the said T. G. Chamberlin, may be cited and condemned to pay your petitioner the amount of said four notes, $15,500, with *with* interest and costs; all other relief the case may require.

(Signed) A. HENNEN, *Att'y for petitioner.*

$3,875. NEW ORLEANS, *September* 14*th*, 1839.

Six months after date I promise to pay, to the order of Moses Chamberlin, three thousand eight hundred and seventy-five dollars and cents, for value received.

Signed, T. G. CHAMBERLIN.

Endorsed—Moses Chamberlin.

Ne varietur. New Orleans, Sept. 16th, 1839.

Signed, HORATIO DAVIS, *Not. Pub.*

$3,875. NEW ORLEANS, *September* 14*th*, 1839.

Nine months after date I promise to pay, to the order of Moses Chamberlin, three thousand eight hundred and seventy-five dollars and cents, for value received.

Signed, T. G. CHAMBERLIN.

Endorsed—Moses Chamberlin.

Ne varietur. New Orleans, Sept. 16th, 1839.

Signed, HORATIO DAVIS, *Not. Pub.*

$3,875. NEW ORLEANS, *September* 14*th*, 1839.

Twelve months after date I promise to pay, to the order of Moses Chamberlin, three thousand eight hundred and seventy-five dollars and cents, for value received.

Signed, T. G. CHAMBERLIN.

Endorsed—Moses Chamberlin.

Ne varietur. New Orleans, Sept. 16th 1839.

Signed, HORATIO DAVIS, *Not. Pub.*

$3,875. NEW ORLEANS, *September* 14*th*, 1839.

Eighteen months after date I promise to pay, to the order of Moses Chamberlin, three thousand eight hundred and seventy [five] dollars and cents, for value received.

Signed, T. G. CHAMBERLIN.

Endorsed—Moses Chamberlin.

Ne varietur. New Orleans, Sept. 16th, 1839.
Signed, HORATIO DAVIS, *Not. Pub.*

*Answer filed 17th January*, 1842.

Circuit court U. S., 9th circuit, eastern district of La.

T. G. CHAMBERLIN
ads.
MOSES CHAMBERLIN.

The defendant T. G. Chamberlin appears, answers, and says, that he denies all the allegations in the petition, and prays to be dismissed with costs.

Signed, T. G. CHAMBERLIN.

This case came on this day for trial, by consent; Alfred Hennen, esq., appearing for the plaintiff, the defendant appearing in person; when, the plaintiff having fully made out his case, it was considered by the court, that judgment be entered up in favor of the plaintiff Moses Chamberlin, and against the defendant True Gilman Chamberlin, for the sum of fifteen thousand five hundred dollars, with interest of five per cent. per annum, from the 17th day of January, 1842, until paid, and for costs of suit.

Judgment rendered 17th January, 1842.
Judgment signed 22d January, 1842.
Signed, THEO. H. McCALEB, *U. S. judge.*

And on the 28th January, 1842, the following fi. fa. was issued from the clerk's office, to wit:

Circuit court of the United States, for the ninth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, that you demand from True Gilman Chamberlin the sum of fifteen thousand five hundred dollars, with interest at five per centum per annum, from the seventeenth day of January, eighteen hundred and forty-two, until paid, and for costs of suit. Clerk's fees $22 00—cash, which Moses Chamberlin lately recovered by judgment of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana. And if he shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said Chamberlin, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein, but if sufficient personal estate of the said Chamberlin, exclusive of slaves, cannot be found in your district, that then you cause the sum to be made out of the real estate and slaves of the said Chamberlin, in your district, whereof he was owner on the 17th day of January, 1842, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Moses Chamberlin for the judgment aforesaid, on the seventeenth day of date, together with this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this 28th day of January, A. D. 1842, and 66th year of the independence of the United States.
[SEAL.]
Signed, DUNCAN N. HENNEN, *Clerk*.

*Marshal's return.*

Received, January 28th, 1842, at one-quarter of 3 o'clock, P. M. Nothing made, and no property found, notwithstanding a demand made of the parties.

For A. SIDNEY ROBERTSON, *Marshal*.
J. P. WALDEN, *D. M.*

And on the 15th January, 1842, the following petition was filed:

J. & J. CHAMBERLIN, vs. T. G. CHAMBERLIN. } No. 891.

U. States 9th circuit court.

To the honorable, the judges of the circuit court of the United States, for the 9th circuit, and eastern district of La.:

The petition of Joseph and Jacob Chamberlin, trading in New York under the firm of J. & J. Chamberlin, citizens of the State of New York, and therein residing, respectfully shews:

That True Gilman Chamberlin, a citizen of the State of Louisiana, therein residing, and trading as a merchant in New Orleans, under the firm of T. G. Chamberlin & Co., in the sum of eighteen hundred and fifty dollars, for the amount of three drafts, drawn on him the 23d August, 1841, one for $650, payable two months after date; one for $600, payable three months after date, and one for $600, payable four months after date, and duly accepted, and now due but unpaid; which three original drafts, hereto annexed for reference and greater certainty, and also in the further sum of $4,193 41, four thousand one hundred and ninety-three dollars $\frac{41}{100}$, the balance due on the annexed account, making together, the sum of six thousand and forty-five dollars and forty-one cents, $6,045 $\frac{41}{100}$, which, though amicably requested, he hath neglected to pay. Wherefore your petitioners pray that the said T. G. Chamberlin may be cited to appear and answer this petition, and may be condemned to pay your petitioners the aforesaid amount of $6,045 $\frac{41}{100}$, six thousand and forty-three $\frac{41}{100}$ dollars, with interest and costs, with all other relief, as the case may require.

Signed, A. HENNEN,
*Att'y for petitioners.*

DR. Messrs. T. G. Chamberlin & Co., in account current with J. & J. Chamberlin.

| | | | | | |
|---|---|---|---|---|---|
| 1839. | | 1839. | | | |
| Mar. 1 | To our note favor A. C. Buggott, 25 Feb'y. | 28 Aug. | $251 50 | 835 | $40 75 |
| April 6 | paid Salamander works in full | 6 April | 226 40 | 979 | 23 01 |
| " 20 | paid your note, due 20 March | 20 Mar. | 301 81 | 905 | 56 66 |
| Aug. 13 | one note favor J. D. Moore & Co. 13 Aug't, 60 days, | 15 Oct. | 544 18 | 787 | 83 24 |
| Sept'r 4 | note favor Jackson, 17th Oct'r, '38, 6 mo. | 20 April | 294 91 | 865 | 49 60 |
| 1840. | | 1840. | | | |
| May 26 | amount ac. agt. Hall, Henry & Co. interest to | 26 May | 88 26 | 463 | 7 92 |
| Dec. 31 | sundry postages to date | | 1 77 | | |
| 1831. | | 1841. | | | |
| June 19 | 1 piece linen, 26 yards, *a* 42½ cents. | 19 June | 11 05 | 74 | 00 15 |
| July 3 | cartage 42 loads of crockery ware | 3 July | 13 12 | 68 | 00 16 |
| July 15 | cash paid you | 15 July | 28 08 | 48 | 00 25 |
| | your draft 18 June, 60 days | 20 Aug. | 532 00 | 12 | 1 23 |
| 19 | paid your acceptance to W. Churchill & Co., protested | 19 July | 1220 31 | 44 | 10 43 |
| 28 | one satin stock | | 1 00 | | |
| 31 | p'd you at sundry times, this month | 31 July | 7 49 | 32 | 00 05 |
| Aug. 3 | paid Robinson for a coat | 3 Aug. | 28 00 | 29 | 00 15 |
| 7 | p'd you at sundry times, this month | 7 Aug. | 33 79 | 25 | 00 16 |
| | one black cloth pants, $7 50 | | | | |
| | satin vest, $5 50 | 7 Aug. | 13 00 | 25 | 00 06 |
| 31 | sundry postages to date | | 5 57 | | |
| Sept. 1 | balance of interest per contra | | 40 93 | | |
| | interest per contra | | | | 30 49 |
| | | | $3643 17 | | 324 31 |
| 1841. | | | | | |
| Sept'r 1 | To balance brought down | | 152 34 | | |
| 7 | paid Bevin's bill, packing, carting, &c. | 7 Sept. | 2 31 | 116 | 00 03 |
| 20 | our note to Adams & brothers, 20 September, 60 days, | 22 Nov. | 568 52 | 40 | 4 42 |
| 22 | paid Corlus Haydock & Co's bill | 22 Sept. | 8 25 | 161 | 00 15 |
| 30 | paid at sundry times this month | | 14 53 | | 00 25 |
| Oct'r 23 | your acceptance, protested, due in ex. $6 00 | 7 Oct. | 975 24 | 86 | 16 29 |
| Nov. 8 | paid doctor's bill, leeching, | 8 Nov. | 4 19 | 54 | 00 04 |
| 12 | G. L. Van Wagner's note, due | 24 June | 65 93 | 191 | 2 45 |
| | your acceptance, not paid | 26 Oct. | 650 00 | 67 | 8 45 |
| 18 | your acceptance in exchange protested, $974 25 | | | | |
| | 10½ dms. 97 42 | 18 Nov. | 1071 67 | 44 | 9 17 |
| Dec'r 27 | your acceptance, not paid, due | 26 Nov. | 600 00 | 36 | 4 20 |
| | your " " " | 26 Dec. | 600 00 | 6 | 00 70 |
| | your " " " | 11 Nov. | 568 52 | 51 | 5 63 |
| 28 | 10½ damages, on your account, protested 19 July, $1,220 31 | | 122 63 | | |
| | 10½ damages, 11 Nov. $568 52 | | 56 85 | | |
| | 10½ " note to Harris & Co. 7 October, $975 24 | | 97 52 | | |
| | sundry postages to date | | 6 42 | | |
| | balance interest, per contra | | 39 85 | | |
| | | | 5604 17 | | 55 42 |
| 1841. | | | | | |
| Dec. 28 | To balance brought down, due 1st Jan. 1842 | | $4193 41 | | |

Interest to 1st September, 1841.

Messrs. T. G. Chamberlin & Co., in account current with J. & J. Chamberlin, CR.

| 1839. | | 1839. | | | | |
|---|---|---|---|---|---|---|
| Feb. 27 | By check on U. S. Bank - - | 27 Jan. | $400 00 | 917 | $71 31 |
| Mar. 9 | cash - - - - | 9 March | 226 40 | 907 | 39 85 |
| April 5 | cash - - - - | 5 April | 300 00 | 880 | 51 33 |
| May 6 | Joseph C., draft, 17 Oct, '39, 5 mo. | 20 Mar. | 300 81 | 896 | 52 44 |
| 13 | cash - - - - | 13 May | 300 00 | 842 | 49 11 |
| | Andrews & Brother, note 8 Feb'y, | | | | |
| 1841. | 60 days - - - | 12 April | 113 62 | 873 | 19 34 |
| Aug. 23 | note on acceptance, 38th Aug. 2 mo. | 26 Oct. | 650 00 | 55 | 6 93 |
| | " 3 mo. | 26 Nov. | 600 00 | 86 | 10 03 |
| | " 4 mo. | 26 Dec. | 600 00 | 116 | 13 53 |
| Sept'r. | balance of interest to debit - | - - - | - - - - | - - - | 40 93 |
| | balance debit account, due - | 1 Sep.'41 | 152 34 | | |
| | | | $3643 17 | - - - | $324 31 |
| 25 | By our draft, 9 September, at 60 days, due - - - - | 11 Nov. | 568 52 | 51 | 5 63 |
| Oct. 26 | cash received for B. cashier | 26 Oct. | 650 00 | 67 | 8 45 |
| Nov. 22 | cash " " " | 22 Nov. | 192 24 | 40 | 1 49 |
| Dec. 28 | balance interest to 1 Jan'y, 1842 | - - - | - - - - | - - - | 39 85 |
| | balance due J. & J. C. 1 Jan. '42 | | 4193 41 | | |
| | | | $5604 17 | - - - | $55 42 |
| | J. & J. CHAMBERLIN, 1841, | | | | |
| | ROBERT PROTHURD. | | | | |
| | N. YORK, 28th *December*, 1841. | | | | |

And on the 15th January, 1842, the following answer was filed.

J. & J. CHAMBERLIN
vs.
T. G. CHAMBERLIN.

Circuit Court of the United States, eastern district of Louisiana.

T. G. Chamberlain, the def't, denies all and singular the allegations of the petition—requires strict proof thereof, and prays to be hence dismissed with costs.

Signed, B. W. GODFREY,
*Att'y for Deft.*

And on the 15th January the following judgment was rendered:

This cause came on this day for trial by consent; Alfred Hennen esquire, appearing for the plaintiffs, and B. W. Godfrey, esquire, for the defendant; when the plaintiffs having fully made out their case, it was considered by the court that judgment be entered up in favor of the plaintiffs, J. & J. Chamberlin, and against the defendant, True Gilman Chamberlin, for the sum of six thousand and forty-three dollars $\frac{41}{100}$ with interest of five per centum from the 15th day of January, 1842, until paid, and for costs of suit.

Judgment rendered January 15th, 1842.

Judgment signed Jan'y 22nd, 1842.

Signed, THEO. H. McCALEB,
*U. S. Judge.*

*Intervention of Paul Tulane, filed 23d February*, 1842.

No. 891, J. & J. Chamberlain vs. T. G. Chamberlin.
No. 892, Joseph C. Chamberlain vs. T. G. Chamberlin.
No. 893, Moses Chamberlin vs. T. G. Chamberlin.
No. 896, S. Heath vs. T. G. Chamberlin.

Four cases, in the circuit court of the United States, in the ninth circuit and eastern district of Louisiana.

Paul Tulane, merchant, residing in New Orleans, comes, and by leave of court first had and obtained, files this his intervention and third opposition, here alledging and shewing to the court that he is proprietor of the store No. 10, in Magazine street, New Orleans, occupied by the defendants, in which are stored the goods, wares, and merchandize which have been seized in these cases by the marshal of this district, in virtue of writs issuing out of this court. The said Tulane, now here, shews to this court that he leased the said store to the said defendants for the term of one year from the first day of December, 1841, at and after the rate of two thousand dollars, payable monthly, and every month, in sums of one hundred and sixty-six dollars and sixty-six cents per month; and that of and on the rent of said premises, and costs in collecting the same, there is now due him, the said Tulane, the sum of seven hundred and sixteen dollars and five cents; and there will be due to him on the first day of October, now next, 1842, the further sum of thirteen hundred and thirty-three dollars and thirty-three cents; all which is fully and particularly set forth in the account hereto annexed for reference. The said Tulane saith that, for the payment of the sum of money stated in said annexed account, so far as now due, as well as for the part thereof to become due, he hath, by the laws of Louisiana, a special lien and privilege upon all the goods, wares, and merchandize in said store, and now under seizure in this case, and is entitled to be paid by privilege and preference over and before the satisfaction of the claims or judgment of the plaintiff in these cases. Wherefore the said Tulane prays that this his intervention, and third opposition, may be filed and duly notified, both to the plaintiffs and defendants, and to the marshal of this district; and that after due [?] in this behalf, there be judgment in his favor in these cases by privilege and preference over the plaintiffs, for the sum of $716 38 now due, and with interest; and that there be a decree in favor of him, said Tulane, for the sum of $1,333 33, by privilege and preference over the plaintiffs; and that the same be paid monthly, and every month, by the marshal, out of the proceeds of the sale of the property now seized, and about to be sold; and the said Tulane prays for his costs in this behalf, and for all needful and equitable relief and, as in duty bound, will ever pray.

By his attorney: Signed, S. C. DUNCAN.

*Messrs. T. G. Chamberlain & Co., to Paul Tulane,* DR.

| | | |
|---|---|---|
| 1841, Dec. 1, To balance rent due on store No 10, Magazine street, N. Orleans, say - - - - | $660 80 | |
| ☞ On this balance suit was instituted on the 15th Dec'r, in the com'l court of New Orleans; before rendition of the judgment the defendant paid - | 200 00 | |
| Judgment was rendered for - - - | $460 80 | |
| With interest *a* 5 per cent. from 15th Dec'r, 1841, till paid, say - - - - - | - | $460 80 |
| 1842, Feb'y 1, To the costs of the clerk and sheriff in the case - | - | 22 25 |
| " rent for Dec'r, 1841, and January, 1842 - | - | 333 33 |
| | | 816 38 |
| By this sum paid on account since the judg't - | - | 100 00 |
| Which, being deducted, leaves due 1st Feb'y, 1842, with 5 per ct. interest on $460 80 for 15 Dec'r, 1841 - - - - - - | - | 716 38 |
| ☞ These premises are leased to Messrs. Chamberlin & Co. until the 1st day of October, 1842, say 8 months, *a* $2,000 per annum, say - | - | $1,333 33 |

E. & O. E., New Orleans, 9th Feb'y, 1842.

Service acknowledged. B. W. GODFREY,
For T. G. CHAMBERLIN.

Service acknowledged. A. SIDNEY ROBERTSON, *U. S. M.*

And on the 23rd February, 1842, the following agreement was filed;

CHAMBERLIN vs. CHAMBERLIN,
HEATH " SAME.

Circuit court U. States, eastern district of La.

S. Heath & Co. vs. T. G. Chamberlin, - - - No. 896
J. & J. Chamberlin vs. T. G. Chamberlin - - No. 891
J. & J. Chamberlin vs. T. G. Chamberlin - - " 892
M. Chamberlin vs. T. G. Chamberlin - - - " 893

It is agreed that all the cases, packages, and merchandise which were sold by the plaintiffs in the above executions to the defendant therein, and which remain in kind unopened and unpacked, in the original packages, in conformity with the art. 3,197, three thousand nine hundred and ninety-seven, of the Louisiana code, shall be delivered up to the plaintiffs or their attorney, and shall be exempt from seizure and sale, and the executions must be credited with the sale price of the goods. This agreement to extend, also, to all the goods and merchandize under the same circumstances sold by Robert Heath, and for which he has judgment in the parish court against T. G. Chamberlin.

New Orleans, 2nd Feb'y, 1842.

(Signed) ALFRED HENNEN,
*Att'y for J. & J. Chamberlin and Moses Chamberlin.*
R. HEATH,
For S. HEATH & CO.
R. HEATH.

And on the 24th February, 1842, the following entry was entered of record, to wit, Thursday, 24th February, 1842.

J. & J. C. CHAMBERLAIN
vs.
T. G. CHAMBERLAIN.

On motion of Elmore & King, of counsel of R. Heath & Co., it is ordered by the court that A. S. Robertson, the marshal of this court, shew cause, if any he has, on the fifth day of March next, why he should not pay over the proceeds of the sale of twelve packages of crockery ware seized by him on execution in the above entitled suits of Joseph Chamberlin vs. T. G. Chamberlain, Moses Chamberlain vs. T. G. Chamberlin, to the said R. Heath upon the following grounds, to wit, that he sold the said packages—a list of the marks and numbers of which are now filed by the said Chamberlain—and he has now been paid for them; that he is entitled to the vendor's privilege upon them, and should be paid by preference to the seizing creditors; and that the parties to the above mentioned suits, J. & J. Chamberlain and T. G. Chamberlain, Moses Chamberlaine and T. G. Chamberlain, be also ordered to shew cause, if any they have, to the same effect, at the same time.

*Marshal's return.*

Received, February 25th, 1842, and on the same day I served a copy of the within order on A. S. Robertson and A. Hennen, in person, and on B. W. Godfrey, by leaving the same at his office in the hands of A. Hennen, esq., all at the city of New Orleans.

Signed, J. P. WALDEN,
*Deputy U. S. Marshal.*

And on the 18th April, 1842, the following answer was filed:

Circuit court United States, 9th circuit and eastern district of Louisiana, on the intervention of Paul Tulane, on the executions of J. & J. & J. Chamberlin and als. vs. T. G. Chamberlin.

The defendants, in the said intervention, appear, answer, and say, that this honorable court hath no jurisdiction in the premises, and the intervention is unauthorized by law; that one of the defendants is a citizen of the State of Louisiana, to wit, True Gilman Chamberlain, and the other defendants are citizens of other States, and not found within the jurisdiction of the court, and intervener hath no right to come into this court and intervene on an execution; wherefore these defendants pray that the intervention may be dismissed for the exceptions aforesaid; but if the court should entertain jurisdiction herein, then these defendants say, that they deny all and singular the allegations of the said Paul Tulane; and they pray that they may be inquired into by a jury, and they may be dismissed with costs.

Signed, A. HENNEN,
*Att'y for defts.*

And on the 23rd of April, 1842, the following entry was entered on the minutes:

*Saturday*, 23*d April*, 1842.

J. & J. CHAMBERLAIN
vs.
T. G. CHAMBERLAIN. } No. 891.

On motion of A. Hennen, esquire, ordered that the marshal shew cause, on Monday next, at 9 A. M., why the amount of monies deposited in court, and arising from the fi. fa. issued in this case, should not be paid to plaintiff.

And on the 25th April, 1842, the following answers were filed.

J. & J. CHAMBERLIN
vs.
T. G. CHAMBERLIN.

The answer to the rule in this case by J. & J. Chamberlin against A. S. Robertson, the marshal, to shew cause why the money now in his hands, subject to the order of the court, the proceeds of the sale of the property of the said T. G. Chamberlain, should not be paid over to J. & J. Chamberlain; the marshal alleges that the property was seized on several executions in his hands, to wit, on one in favor of J. & J. Chamberlain, one in favor of Moses Chamberlain, and one in favor of Robert Heath, all the executions being against T. G. Chamberlain; that several rules have been taken against him to show cause why certain privileged claims should not be paid out of the said money by preference, viz: one of Paul Tulane, claiming the landlord's privilege; one by Robert Heath, claiming the vendor's privilege; that the marshal has no interest in the said money. He prays, therefore, that the parties in interest in this matter, to wit, Robert Heath, Moses Chamberlain, and Paul Tulane, have notice of this proceeding.

Signed, A. SIDNEY ROBERTSON,
*U. S. Marshal.*

J. & J. CHAMBERLAIN,
vs.
J. G. CHAMBERLAIN.

United States circuit court, in and for the eastern district of Louisiana.

To the rule taken in this case against the marshal, to shew cause why the money now deposited in court, the proceeds of the property of T. G. Chamberlain, should not be paid over to the said J. & J. Chamberlain, Robert Heath, one of the parties in interest in said rule in answer thereto, respectfully represents: That he is entitled to the vendor's privilege upon a portion of the goods sold by the marshal, and is entitled to be paid by preference out of the proceeds of said goods; that to secure to himself the benefits of his privilege, he has taken a rule in this case, which is as yet undisposed, and that the said J. & J. Chamberlain cannot obtain the said money, until that rule is first disposed of.

And for a further answer to the said rule, he alleges, that the marshal of this court seized the goods of T. G. Chamberlain, on several executions issued on judgments obtained in this court, to wit: on an execution

in favor of J. & J. Chamberlain, in suit of this docket, No. ; on another in favor of Moses Chamberlain, of this docket, suit No. ; and on another in favor of the said Robert Heath, in suit No. ; all of the said executions being against the said T. G. Chamberlain; that the marshal was enjoined from making the sale at the suit of Cartledge against the plaintiffs, in the above mentioned suits, by a proceeding in equity in this court, and of the docket suit No. ; whereupon, it was agreed by all the parties, that the marshal should sell the goods seized, and deposited the proceeds in court, and that upon this consent being made, the court did order that the marshal should sell the goods and deposit the proceeds of the sale in court; all of which has been done, and the said proceeds are now subject to the further order of this court. The said Heath further alleges, that in consequence of the seizure made by the marshal on execution issued in his said suit against said Chamberlain, he has a privilege upon the proceeds of said goods, and is entitled to be paid out of the money now in court by preference. He further alleges, that the said J. & J. Chamberlain, the said Moses Chamberlain, have no right whatever to the said money; that the judgments in favor of J. & J. Chamberlain and Moses Chamberlain, against T. G. Chamberlain, have both of them obtained by collusion and fraud, and are void, so far as they affect the rights of the said Heath. He denies that the said T. G. Chamberlain was indebted to the said J. & J. Chamberlain, or to the said Moses Chamberlaine, or that he is now indebted to them; but even if he was indebted to them for the amount of their respective judgments, the said Heath alleges that the said judgments and the proceedings under them are fraudulent, illegal, and void, and cannot defeat his right to be paid out of the money in court by preference. That the said T. G. Chamberlain was largely indebted to the said Heath, and was indebted to him for the sum on which he obtained judgment, at the time the said J. & J. Chamberlain and Moses Chamberlain fraudulently obtained their judgments, and that he is still indebted to the said Heath for the judgment recovered against him. That the said T. G. Chamberlain was in insolvent circumstances, and this to the knowledge of the said J. & J. and Moses Chamberlaine. That with the view and for the purpose of giving them a preference, they being brothers of the said T. G. Chamberlaine, it was contrived and agreed upon between them, that the judgments should be obtained in their favor in such a manner as necessarily to give them a preference over the said Heath. That the judgment in favor of the said J. & J. Chamberlain, and also the judgment in favor of Moses Chamberlain, were obtained by them with the understanding, and by agreement with the said T. G. Chamberlain, that they should thereby get a preference over the other creditors of said T. G. Chamberlain, and with the view of depriving them of their recourse upon the property of said T. G. Chamberlin. That upon the judgment rendered in favor of J. & J. Chamberlain, execution was issued, and all the property of the said T. G. Chamberlain seized. That his property was sold, and if the said money now in court, the proceeds of said property is paid over to the said J. & J. Chamberlain, they will

obtain an unjust and fraudulent preference over the other creditors of the said T. G. Chamberlain, through their fraudulent contrivances; all of which is illegal, and confers upon them no manner of right to the money now in court; but all of the said proceedings are utterly void, so far as they affect the rights of the said Heath. The said Heath further alleges that the execution in favor of the s id J. & J. Chamberlain, confess no right, lien, or privilege, upon the money in court; because the said execution was issued illegally, and before the necessary time had elapsed after judgment for the issuance of said execution. The levy made under the execution is illegal and void.

Wherefore the said Heath prays that the said J. & J. Chamberlain and the said Moses Chamberlain be served with copies of this answer, and that after all due proceedings had, that the court order the marshal to pay over the money now in court to the said Robert Heath.

And on the 26th April, 1842, the following entry was entered of record, to wit:

*Tuesday, April 26th*, 1842.

J. & J. CHAMBERLIN, vs. T. G. CHAMBERLIN. } No. 891.

The rule taken in this case by the plaintiffs to shew cause why the moneys in the hands of the marshal of this court, and raised under an execution issued in this case, should not be paid over to plaintiffs as having a preference and right thereto under their execution as first issued, and levied upon the property, seized and sold, was this day finally considered by the court; and after having the opposition made thereto, it was ordered by the court that the marshal do pay over to the said J. & J. Chamberlin, the amount of received under the execution issued in this case.

And on the same day the following bill of exceptions was filed:

J. & J. CHAMBERLIN vs. T. G. CHAMBERLIN.

The United States circuit court, holding sessions in and for the eastern district of Louisiana.

On the trial of the rule, taken in this case by the plaintiffs on the marshal, to show cause why the money in his hands should not be paid over to the plaintiffs, Robert Heath, one of the parties in interest, appeared and filed an answer thereto, which is hereunto annexed; to which there was an objection made by the counsel of the plaintiff, and the court refused to entertain said answer, upon the grounds that the matters therein set forth could not be inquired into in this proceeding; to which opinion of the court the counsel for Heath excepts, and pray that this their bill of exceptions be signed and sealed, which is done accordingly.

Signed, J. McKINLEY, [SEAL.]
Signed, THEO. H. McCALEB. [SEAL.]

And, on the 27th of April, the following affidavit of A. Hennen was filed:

J. & J. CHAMBERLIN
vs.
T. G. CHAMBERLIN.

Circuit court of the United States, eastern district of Louisiana.

Alfred Hennen, attorney of the plaintiffs, on oath doth declare and say, that he has presented, to the marshal of this court, the order entered in this case yesterday, the 26th April, 1842, for the payment over to the plaintiffs of the money made on the execution in this case, and which he acknowledged to be in his hands, to the amount of more than four thousand dollars; but he has refused, and now refuses, to comply with said order, and will not pay over the money in his hands to the plaintiffs in the execution.

Signed, ALFRED HENNEN.

Sworn to and subscribed, before me, this 27th April, 1842.

Signed, DUNCAN N. HENNEN, *Clerk.*

And on the 37th April, 1842, the following entry was entered of record, to wit:

WEDNESDAY, *April 27th*, 1842.

J. & J. CHAMBERLIN
vs. No. 891.
T. G. CHAMBERLIN.

On motion of Alfred Hennen, esquire, and on filing his affidavit, ordered that the marshal of this court shew cause to-morrow, at half past 9 o'clock, A. M., why an attachment should not issue against him for contempt of this court, in refusing to pay over the money ordered to be paid to plaintiffs, by the order of this court of the 26th April, 1842.

And on the first of June, 1842, the following entry was entered of record, to wit:

WEDNESDAY, 1*st June*, 1842.

J. & J. CHAMBERLIN
vs. No. 891.
T. G. CHAMBERLIN.

On motion of Grymes & Claiborne, of counsel for plaintiff in this cause, it is ordered, that Alfred Hennen, esquire, an attorney and counsellor at law of this court, do shew cause on Monday, the 6th day of June, 1842, at 12 o'clock, M., why he should not pay over to plaintiffs the sum of $3,000 by him received on their account in this case, on the sixteenth day of April last; and which he has, although requested so to do, neglected and refused to pay over to said plaintiffs.

*Marshal's return thereon.*

Received, June 1st, 1842, and on the same day I served a copy of the within order on A. Hennen, esq., in person, at New Orleans.

J. P. WALDEN, *Deputy marshal.*
For A. SIDNEY ROBERTSON, *Marshal.*

And on the 6th June, 1842, the following entry was entered of record, to wit:

MONDAY, *June 6th*, 1842.

J. & J. CHAMBERLIN
vs.
T. G. CHAMBERLIN. } No. 891.

The rule taken in this case on A. Hennen, esquire, to shew cause why certain monies received by him on account of the plaintiffs should not be paid over to them, came on this day; and, after hearing the arguments of counsel, the court postponed the further consideration of the rule until Thursday next, the 9th June, at 10 o'clock, A. M.

And on the 9th June, the following agreement was filed:

J. & J. CHAMBERLIN
vs.
T. G. CHAMBERLIN.

Circuit court U. S., 9th circuit eastern district, La.

On the rule taken upon Alfred Hennen in this case, to pay over the sum of three thousand dollars by him received from the marshal on the fi. fa., we agree to allow him, as a fee for his professional services, one thousand dollars rendered us; and that said sum of one thousand dollars, and also the further sum of three hundred dollars, money lent us by him, making $1,300, be deducted out of the amount, on the court ordering the same to be paid over.

New Orleans, 9th June, 1842.

Signed, JACOB CHAMBERLIN,
For J. & J. CHAMBERLIN.

And on the 9th June, 1842, the following entry was entered of record, to wit:

THURSDAY, *June 9th*, 1842.

J. & J. CHAMBERLIN
vs.
T. G. CHAMBERLIN.

The trial of the rule taken in this case, on A. Hennen, esquire, was this day resumed; when, the argument of counsel being closed, it was considered by the court that the rule be made absolute, and that said A. Hennen, esquire, do pay to plaintiff the sum of three thousand dollars, deducting three hundred dollars for money loaned, and one thousand dollars for his services, as per agreement between the parties on file.

And on the 24th February, 1842, the following bill in equity was filed, to wit:

CHARLES CARTLEDGE
vs.
T. G. CHAMBERLIN, MOSES CHAMBERLIN, JOSEPH CHAMBERLIN, JACOB CHAMBERLIN, and ROBERT HEATH. } No. 909. In equity.

To the honorable the judge of the circuit court of the United States for the ninth judicial district.

Humbly complaining your orator, Charles Cartledge, a citizen of the State of New York, shews unto this honorable court, that True Gilman Chamberlin, a citizen of Louisiana, who resides in the city of New Orleans, is your orator's debtor in the full and just sum of two thousand eight hundred and nine dollars and twenty-three cents, with interest thereon, according to the tenor of three several bills of exchange or promissory notes, each for the sum of nine hundred and thirty-six dollars and forty-one cents each, dated on the 21st day of August last, and payable thereafter in five, six, and seven months, and that the said notes were given your orator for the purchase of crockery and glass ware from your orator by the said Chamberlin, whose business is that of a dealer in glass ware and crockery in the city of New Orleans.

Now your orator further shews unto this honorable court, that the said True Gilman Chamberlin, contriving how he might wrong and injure your orator, and defraud him of his just claim, in collusion with one Robert Heath, who calls himself the surviving partner of the firm of S. Heath & Co., and an alien and subject of her majesty Queen Victoria, and one Moses Chamberlin, who calls himself a citizen of Missouri, one Joseph Chamberlin, who calls himself a citizen of New York, and Joseph and Jacob Chamberlin, who call themselves citizens of the State of New York, and whom your orator believes to be brothers of the said True Gilman Chamberlin, did suffer judgments to be recovered against him in this honorable court, in favor of the said Moses Chamberlin in the sum of $15,500, interest and costs; in favor of the said Joseph Chamberlin in the sum of $1,887 23, interest and costs; and in favor of the said Joseph and Jacob Chamberlin in the sum of $1,850, interest and costs; and in favor of the said Robert Heath, as surviving partner of the said S. Heath & Co., in the sum of $4,506 83 cents, with interest and costs; that said judgments were recovered wrongfully, collusively, and fraudulently, with the design to defeat and destroy the claims of your orator, by securing the property in the possession of the said True Gilman Chamberlin by judicial sale, under judgments based upon fictitious claims, or by a preference to the said Heath, Moses, Joseph, and Jacob Chamberlin, contrary to law, and in violation of equity and good conscience.

Your orator shews, that by the records of the said suits in this honorable court, in which said judgments were recovered, abundant evidence is presented to justify these allegations. That by said records it appears that the petition of the said Moses Chamberlin was filed on the 17th January last; that service was accepted by the said T. G. Chamberlin on that day, and on that day, by consent, there was a trial and judgment. That the petitions of the said Joseph Chamberlin, and of Joseph and Jacob Chamberlin, were filed on the 15th January last; that on the same day services of the same were accepted, and, by consent, on the same day, trials were had and judgments obtained. That the said Robert Heath filed his petition on the 25th of January; that on the same

day an answer was filed, and on the same day a trial was had and a judgment obtained, and an agreement written, that judgment should be signed the same day.

Your orator further shows, that the said petitions were all drawn by Alfred Hennen, esquire, as counsel for the petitioners, and the answers thereto were all made by B. W. Godfrey, a young gentleman recently admitted to the bar, who was a student with the said Alfred Hennen, esquire, and is now, and at the date of these proceedings was, in the office of the said Hennen.

Now your orator further shows, that by virtue of writs of fi. fa., which have issued from this honorable court upon the said judgments, recovered as aforesaid, the marshal of this district has advertised for sale the stock of crockery and glass ware, and the contents of the store occupied by the said T. G. Chamberlin, in the city of New Orleans, on the day of February instant.

Your orator further shews, that the said Robert Heath, as surviving partner of the said firm of S. Heath & Co., has filed a petition against the said True Gilman Chamberlin, in the district court of the United States for the eastern district of Louisiana, setting forth his claim against the said Chamberlin, and praying, for the reasons therein contained, that the said Chamberlin be declared a bankrupt, under the act of Congress. And that your orator has also filed his petition, in said court, against the said Chamberlin, and, for the reasons set forth therein, joining with the said Heath in the same prayer.

Now your orator shows, that the said Heath, by the express terms of the act of Congress aforesaid, under which his said petition was filed, praying that the said Chamberlin be declared a bankrupt, has released and abandoned his aforesaid unsatisfied judgment, or any privilege or priority thereby obtained, and the same cannot be legally executed.

And your orator complains, that the proceedings in bankruptcy against the said T. G. Chamberlin will be wholly futile—the purpose and design of the national bankrupt law will be evaded, and his rights, as a just and bona fide creditor of the said T. G. Chamberlin, who is notoriously insolvent, to share the proceeds of the property, by him possessed, *pro rata*, with his other creditors, will be compromised and destroyed, if the equity powers of this honorable court are not exercised to arrest the proceedings under the aforesaid executions, in favor of said Heath, and Moses, Joseph, and Jacob Chamberlin.

In consideration whereof, and forasmuch as your orator has no full, complete, and adequate relief, but upon the equity side of this honorable court, he asks for due process according to law, and the course of practice of this honorable court, against the said Robert Heath, and Moses Chamberlin, Joseph Chamberlin, Jacob Chamberlin, and True Gilman Chamberlin, either personally, or by their attorney, respecting them in the suits, upon which judgments were recovered as aforesaid, that they be caused to appear and make answer to this bill, and abide by such decree herein as to this honorable court shall seem meet.

And your orator prays, the premises considered, that the said judg-

ments recovered as aforesaid by the said Heath, Moses, Joseph, and Jacob Chamberlin, against T. G. Chamberlin, be annulled and avoided, as in fraud of the rights of your orator, as the true and lawful creditor of the said True G. Chamberlin; that all proceedings in execution of the aforesaid judgments by the marshal, according to the advertisement of sale of the said marshal, be forthwith staid by the enjoining power of this honorable court, to await and abide by the proceedings in bankruptcy against the said T. G. Chamberlin, instituted by the said Heath, that the said property may go into the hands of assignees, to be disposed of for the benefit of all the creditors *pro rata.*

And your orator prays for such further orders and decrees herein, as the nature of the case, and the equitable relief sought by him demands, and as the equity powers of this honorable court allows; and as in duty bound, your orator will ever pray.

(Signed) UPTON, *solicitor for the complainant.*

UNITED STATES OF AMERICA,
*Circuit court of the United States:*

Personally appeared Herbert Q. Ferguson, the duly authorized agent and attorney in fact of Charles Cartledge, the orator in the within bill, and being duly sworn, makes oath to the truth of the facts set forth in this bill.

(Signed) HERBERT Q. FERGUSON.

Sworn to before me, this 23d February, 1842.

(Signed HENNEN, *Clerk.*

And on the 26th February, 1842, the following five subpœnas in chancery were issued:

United States of America, the President of the United States to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Jacob Chamberlin, to appear before the honorable the judges of the ninth judicial circuit of the United States of America, at a circuit court to be holden on 1st Monday of April, 1842, then and there to answer a bill in chancery filed against him, wherein Cartledge is plaintiff, and the said Chamberlin and als. defendants: herein fail not, and have you then and there this writ, with your endorsement thereon, how you executed the same.

Witness the honorable R. B. Taney, chief justice of the Supreme [L. S.] Court of the United States of America, this 26th day of February, in the year of our Lord one thousand eight hundred and forty-two, and the sixty-sixth year of American independence.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return thereon. Received Feb'y 25th, 1842, and on the 26th same month and year, served a copy of the within summons in chancery on Jacob Chamberlin, in person, in the city of New Orleans.

(Signed) A. S. ROBERTSON,
*U. S. Marshal.*
By WM. K. STILES,
*Deputy U. S. Marshal.*

413.

United States of America, the President of the United States to the marshal for the eastern district of Louisiana, greeting:

You are hereby commanded to summon Joseph Chamberlin, to appear before the honorable the judges of the ninth judicial circuit of the United States, at a circuit court to be holden on first Monday in April next, 1842, then and there to answer a bill in chancery filed against , wherein Charles Cartledge is plaintiff, and said Robert Heath, Moses Chamberlin, Joseph Chamberlin, Jacob Chamberlin, and True Gilman Chamberlin, are defendants; herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, this 26th day of February, in the year of our Lord 1842, and 66th year of the American independence.

[L. S.]

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return. Received, February 25th, 1842, and after diligent search and enquiry, the within named, Joseph Chamberlin, could not be found in the State of Louisiana.

(Signed) A. S. ROBERTSON,
*U. S. Marshal.*
By WM. K. STYLES,
*Deputy U. S. Marshal.*

United States of America, the President of the United States to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon True Gilman Chamberlin, to appear before the honorable the judges of the ninth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of April next, 1842, then and there to answer a bill in chancery filed against , wherein Charles Cartledge is plaintiff, and the said Robert Heath, Moses Chamberlain, *Jacob* Chamberlin, Jacob Chamberlin, and True Gilman Chamberlin, are defendants; herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this 26th day of February, in the year of our Lord one thousand eight hundred and *twenty-sixth*, and sixty-sixth year of the American independence.

[L. S]

(Signed) DUNCAN N. HENNEN, *Clerk.*

Received, February 25th, 1842, and on the 26th same month and year, served a copy of the within on T. G. Chamberlin, in person, in New Orleans.

A. S. ROBERTSON,
*U. S. Marshal.*
By WM. K. STILES,
*Deputy U. S. Marshal.*

United States of America, the President of the United States to the marshal of the United States, for the eastern district of Louisiana, greeting:

You are hereby commanded to summon Robert Heath, to appear before the honorable the judges of the ninth judicial circuit of the United States of America, at a circuit court to be holden on first Monday of April next, 1842, then and there to answer a bill in chancery filed against , wherein Charles Cartledge is plaintiff, and the said Robert Heath, Moses Chamberlin, Joseph Chamberlin, and True Gilman Chamberlin, defendants; herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, this 26th day of February, in the year of our Lord one thousand eight hundred and forty-two, and the sixty-sixth year of American independence. [L. S.]

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's return. Received Feb'y 25th, 1842, and on the 5th March, 1842, served a copy of the within summons in chancery on Robert Heath, in person.

A. S. ROBERTSON, *U. S. Marshal.*
By WM. K. STILES, *D. U. S. M.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Moses Chamberlin to appear before the honorable the judges of the ninth circuit of the United States of America, at a circuit court to be holden on first Monday in April next, 1842, then and there to answer a bill in chancery filed against , wherein Charles Cartledge is plaintiff, and said Robert Heath, Moses Chamberlin, Joseph Chamberlin, Jacob Chamberlin, and True Gilman Chamberlin, are defendants. Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the hon. R. B. Taney, chief justice of the Supreme Court of the United States of America, this twentieth day of February, in the year of our Lord one thousand eight hundred and forty-two, and sixty-sixth year of American independence.

Signed, DUNCAN N. HENNEN, *Clk.* [SEAL.]

Marshal's return. Received February 25th, 1842; and, after diligent search and enquiry, the within named Moses Chamberlin could not be found in the State of Louisiana.

A. S. ROBERTSON,
By WM. K. STILES, *D. U. S. M.*

And on the 24th of February, 1842, the following entry was entered of record, to wit:

*Thursday, Feb'y 24th*, 1842.

CHARLES CARTLEDGE vs. T. G. CHAMBERLIN. } No. 909.

It is ordered, on the reading and filing of the bill in equity, in this case, of the argument of counsel for the complainant and defendants, and *there* consent thereto, that the marshal proceed to make sale of the property seized by him as the property of True Gilman Chamberlin, and that he deposit the entire proceeds thereof in court, subject to the order of the court.

And on the second of April, 1842, the following two demurrers were filed:

CHARLES CARTLEDGE vs. JACOB CHAMBERLIN and others.

In the court of the United States, sitting in chancery, in and for the 9th circuit and eastern district of Louisiana:

April term, 1842.

*Demurrer.*

The defendant, Jacob Chamberlin, by protestation not confessing any of the matters and things contained in said bill to be true, in such manner as the same are therein stated and alleged, demurs thereto, and, for cause of demurrer, shews that the scope and end of said bill is to be relieved against certain proceedings therein mentioned, and to obtain the relief therein prayed for; and alleges, that Jacob Chamberlain and Joseph Chamberlin, two of the defendants, are citizens of the State of New York; that Moses Chamberlin, another defendant, is a citizen of the State of Missouri, and that the complainant is a citizen of said State of New York. Wherefore, and for divers other good causes of demurrer, this defendant demurs thereto, and humbly demands the judgment of this honorable court, whether he shall be compelled to make any other and further answer to said bill, and prays to be hence dismissed with his costs.

Signed, ALFRED HENNEN,
*Solicitor for Jacob Chamberlin.*

In the [circuit] court of the United States, sitting in chancery, in and for the 9th circuit and eastern district of the State of Louisiana:

CHARLES CARTLEDGE vs. J. V. CHAMBERLIN and als.

April term, 1842.

The defendant, True Gilman Chamberlin, by protestation not confessing any of the matters and things contained in said bill to be true, as therein set forth and alleged, demurs thereto, and for cause of demurrer

shews that the scope and end of the said bill is to be relieved against certain proceedings therein mentioned; and, to obtain them, prayed for, and alleges that Jacob Chamberlin and Joseph Chamberlin, two of the defendants to the said bill, are citizens of the State of New York, and that M. Chandler, another defendant, is a citizen of the State of Missouri; and that he, the said complainant, is also a citizen of the State of New York. Wherefore, and for divers other good causes of demurrer, this defendant demurs thereto, and humbly demands the judgment of this honorable court, whether he shall make any other or further answer thereunto, and prays to be dismissed hence with his costs.

Signed, HOOPER & CARTER,
*Sol's for def't, T. G. Chamberlin.*

On the 24th February, 1842, the following was filed:

It is ordered, that on reading and filing of the bill in equity, in this case, of the argument of counsel for the complainant and defendants, and the consent thereto, that the marshal proceed to make sale of the property seized by him as the property of True Gilman Chamberlin; and that he deposit the entire proceeds thereof in court, subject to the order of the court.

And on the 23d of April, 1842, the following agreement was filed:

*Circuit court U. S. eastern district of Louisiana:*

C. CARTLEDGE
vs.
T. G. CHAMBERLIN, J. & J. CHAMBERLIN.

The clerk of the court is hereby authorized to dismiss this suit, and enter the dismissal on the minutes; and the same is hereby dismissed.

New Orleans, 23d April, 1842.

Signed, FRANCIS H. UPTON,
*Att'y for Chas. Cartledge.*

And on the same day the above was entered of record, to wit:

By the written order of the complainants' counsel this bill is dismissed, at the complainants' costs.

The following testimony, of McMurdo and Fergusson, filed June 24th, 1843:

John R. McMurdo, witness, states that he is acquainted with T. G. Chamberlin, and has known him for five or six years. He had an opportunity, from the nature of his acquaintance, of forming an idea of the solvency of the said Chamberlin; that he considered him insolvent as early as 1839; he is now, and was in January, 1842, utterly insolvent; that witness acted as agent of S. Heath & Co. in the year 1841, during the absence of R. Heath; that the said Heath placed in his hands for collection a number of notes given by the said T. G. Chamberlin and T. G. Chamberlin & Co., the whole amounting to about ten thousand dollars; that Chamberlin paid [a] small amount on the first note that fell due; the balance of the notes, none of them were paid; that he

called on Chamberlin frequently to get him to settle these debts; that Chamberlin always held to him the idea that he was anxious to pay these particular debts, saying there were other debts he did not care about paying; that Chamberlin promised witness from time to time to secure the debt due to Heath, by paying a portion of it in money, and a portion in paper; none of which promises did he comply with; that Chamberlin put time off by these deceptive promises; that it was in consequence of them, that he did not sue him for the money; that things remained in this [condition] when Mr. Heath returned to the city; that a day or two after Mr. Heath returned, he was surprised to learn from Mr. Heath that Chamberlin had confessed judgment in favor of his brothers, for large amounts; that witness knows of no other property which Chamberlin possessed, besides his store in Magazine street, and a lot of ground in Lafayette, worth about five hundred dollars.

Cross examined.

That Joseph & Jacob Chamberlin were not parties, so far as witness knows, to the deceptive promises of the said T. G. Chamberlin; that witness had nothing to do with them; that he had heard that T. G. Chamberlin was largely indebted to them, but did not know this of his personal knowledge; witness does not know that J. & J. Chamberlin were aware of the insolvency of T. G. Chamberlin.

Re-examined by plaintiff.

Witness knows that T. G. Chamberlin & T. G. Chamberlin & Co., were indebted to S. Heath & Co., for crockery ware sold to them.

Signed, J. R. MACMURDO.

The jurat to this is dispensed with.

Herbert Q. Ferguson, witness, states, that he was well acquainted with T. G. Chamberlin; that said Chamberlin was insolvent in the month of January, 1842, and had been for a considerable time previous to that period; that T. G. Chamberlin told witness, in the beginning of January, that he did intend applying for the benefit of the bankrupt law; that witness is a creditor of Chamberlin, and has endeavored to find out Chamberlin's property; that witness could never hear of any other property belonging to Chamberlin, besides his store in Magazine street, and a lot of ground in Lafayette; the lot of ground in Lafayette was worth four or five hundred dollars; the lot was mortgaged to Mr. Heath.

Cross examined.

Witness believes that J. & J. Chamberlin were aware of the insolvency of T. G. Chamberlin; he thinks so, from the manner in which Jacob Chamberlin hastened on to this city, for the purpose of stopping the proceedings in bankruptcy, which witness had instituted against T. G. Chamberlin, shortly after the bankruptcy law went into operation; that Jacob Chamberlin told witness that he was at Charleston when he heard of these proceedings, and that he hurried on here immediately, to put a stop to them.

Re-examined.

That Jacob Chamberlin told witness, that he had no idea that T. G. Chamberlin's affairs were in such a situation, until he, T. G. Chamberlin, came on to the north [in] the summer of 1841; witness thinks that Jacob Chamberlin was aware of the insolvency of T. G. Chamberlin at that time, to wit, the sum[mer] of 1841, or he could not have used those expressions.

Signed, H. Q. FERGUSON.

The jurat dispensed with.

The above testimony taken by consent, to be used in the case of R. Heath vs. J. & J. Chamberlin, T. G. Chamberlin, and Moses Chamberlin, in chancery in the U. S. C. C. court, for the eastern district of Louisiana.

Signed, JOHN CLAIBORNE, *Solicitor for respondents, to J. & J. Chamberlin.*
ELMORE & KING,
*Attorneys for Heath.*

May 8th, 1843.

*Testimony of Fonvergne, filed June 24th,* 1843.

Virgil Fonvergne, witness for complainant, being sworn, and says, that at the time the contents of the store occupied by T. G. Chamberlin was seized by complainant, and J. & J. Chamberlin, and others, under executions issued from circuit court of United States, about the month of January, 1842, he was clerk in said store, employed by said T. G. Chamberlin; that at the time of said seizure, there were twelve packages of crockery, to wit, the packages in the annexed list, being twelve in number, which were seized by the said U. S. marshal, and *and* were subsequently sold by him; witness knows that the said Chamberlin, purchased the said packages of the complainant, R. Heath, and that the notes given to Mr. Heath on which he obtained judgments, were given by Chamberlin to Heath, for crockery ware purchased of Heath, and that those notes have never been paid; witness supposes, that goods to the amount of ten or twelve thousand dollars, were sent to T. G. Chamberlin, at St. Louis, from September, 1839, up to January, 1842; that Moses Chamberlin did not send any money or return for them, because he held notes of T. G. Chamberlin; that the value of the goods sent to Moses, ought to be credited on the notes held by Moses Chamberlin; that witness knows these facts from having been clerk of T. G. Chamberlin during that time; witness knows that Alfred Hennen, esquire, had been for a long time previous to January, 1842, the counsel of T. G. Chamberlin, and that he still acted as his legal adviser at that period; witness knows that Mr. T. G. Chamberlin was in the habit of going to see Mr. Hennen, about the time he confessed those judgments in favor of his brothers; witness does not believe that T. G. Chamberlin ever gave Mr. Godfrey any fee for attending to the suits in which he confessed judgment; that Mr. Godfrey sued Jacob Chamberlin for one hundred and fifty dollars, for fees in May or June, 1842; witness knows that T. G. Chamberlin

was in the habit of compounding with his brothers in New York, and his brother at St. Louis, before and about the time he confessed judgments in their favor; that witness heard T. G. Chamberlin say, that his brother was coming out here from New York, before Jacob Chamberlin arrived here.

Signed, VIRGILE FONVERGNE.

Sworn to, and subscribed before me, this 16th May, 1843.

O. JACKSON, *Judge.*

John P. Walden, a deputy marshal of the U. S. C. C. for the fifth judicial circuit and district of Louisiana, being sworn, states that he was acting a deputy marshal at the time the store of T. G. Chamberlin in Magazine street was seized and sold, by the marshal, on various executions from the United States circuit court, against said Chamberlin; that the said store was seized on executions in favor of J. & J. Chamberlin, J. Chamberlin, Moses Chamberlin and S. Heath & Co.; the sale of the goods amounted to four thousand six hundred dollars and $\frac{19}{100}$; that the goods contained in the memorandum annexed to Fonvergne's testimony, were sold separately at the request of Mr. Heath, and brought the price of $219 00, two hundred and nineteen dollars, which sum was paid to the marshal.

Signed, J. P. WALDEN.

Sworn to and subscribed before me, this 19th May, 1843.

H. B. PAGE, *D. C.*

List referred to in Fonvergne's testimony: [T] C C, 60; [T] G C C L A, 20; [†] G G C, 110, 3742; [T] H C, 17; [T] G C, No. 9; T G C y, to 17; T G C, 12, 31, 38; B T G C C, 14; [C] 110, 12.

Signed, VIRGILE FONVERGNE.

It is agreed, that the testimony within be received on the hearing of this cause; and also, that the document numbered 5,032, from the commercial court, be admitted; and further, that either party may introduce on the hearing, any records on the law side of the court.

Signed, JOHN CLAIBORNE, *Solicitor of J. & J. Chamberlin and of J. Chamberlin.*

ELMORE & KING, *Solicitors for complainants.*

*Copy of testimony of A. S. Robertson, filed 24th June*, 1843.

PAUL TULANE vs. T. G. CHAMBERLIN. } No. 5,032 Commercial court of New Orleans.

Testimony of A. S. Robertson, taken in open court the 14th May, 1842.

A. S. Robertson, witness for plaintiff, sworn, says, that he is the U. S. marshal, eastern district of Louisiana. Witness gave Mr. Hennen the money, $3,000, with the understanding that witness should be held harmless, and that Hennen would keep the money in his hands until every thing was disposed of. Mr. Hennen came into witness' office and told

witness that the matter had been settled; in consequence of which witness gave him the money, with the understanding that he should keep the money, and not pay it over to plaintiff in execution. Jacob Chamberlin was frequently in witness' office while the property was under seizure, and subsequently; he told witness that Elmore & King's claim, attorneys for Heath, had been defeated. During the conversation Mr. Elmore came in, and asked him if he could pay the money to Chamberlin; he said witness would not be safe in doing so, and he then asked Chamberlin what had become of Tulane's opposition. Chamberlin gave him some answers which raised witness' suspicions, and he then went to Mr. A. Hennen and told him to hold on to the money, and not to pay it over. Does not recollect any conversation with Chamberlin relative to Tulane's opposition, with the exception of the conversation above spoken of. Witness knew of the extent of Tulane's claim, and he went to him and told him that the property was going very low, and would not probably bring enough to pay his rent.

Cross examined. Was present in court when the judge gave his opinion, and the sequestration was handed to witness about half a minute after.

New Orleans, clerk's office, 1st June, 1843.

[SEAL.] A true copy: ED. GARDEN, *Clerk.*

*Marshal's return of the injunction issued third May*, 1842.

Received May 3rd, 1842, and on the same day I served *I* copy of the within injunction on A. S. Robertson, marshal, in person, at New Orleans.

Signed, J. P. WALDEN, *Deputy marshal.*

The following evidence offered on the part of the defendants, all the proceedings in suit 896.

The following petition was filed on 25th January, 1842:

*United States district court of Louisiana:*

The honorable the judges of the 9th circuit court of the United States for the eastern district of Louisiana.

The petition of Robert Heath, surviving, partner of S. Heath & Co., subjects of her majesty Queen Victoria, of the kingdom of Great Britain, respectfully shews: That True Gilman Chamberlin, merchant, a citizen of the United States, residing in the city of New Orleans, State of Louisiana, is justly indebted to your petitioner in the following notes of hand, drawn by the said T. G. Chamberlin, one of the commercial firm of T. G. Chamberlin & Co., which was composed of the said T. G. Chamberlin and Moses Chamberlin, merchants, both citizens of the United States, to wit:

One note, dated N. Orleans, 28th May, 1839, 4 months after date, for $1,810 20:

| | | | | |
|---|---|---|---|---|
| 13th August, | " | 60 days, | " | $1,249 56; |
| 16th May, | " | 6 months, | " | 903 87; |
| 28th May, | " | 6 months, | " | 910 95; |
| 13th August, | " | 4 months, | " | 632 26; |

All drawn to the order of S. Heath & Co., aliens and subjects of the queen of Great Britain, Victoria aforesaid; which notes have been due and payable, and the two first of which were protested for non-payment; in which protests there are six dollars costs. No part of which notes, except one thousand on the first mentioned, has been paid, as will more fully appear from the original notes, and two protests annexed for reference, and to which, for greater certainty, your petitioner refers.

Your petitioner further shews that said T. G. Chamberlin agreed, in writing, to pay ten per cent. interest on said notes, from the time they became due until paid; on which said five notes of hand, after deducting the payment made as aforesaid, there is now due your petitioner the sum of $5,693 50, which, though amicably requested, the said T. G. Chamberlin hath refused to pay, though thereto amicably requested. Wherefore your petitioner prays that said T. G. Chamberlin may be cited to appear and answer this petition, and that judgment may be rendered against him for the amount of said notes, with ten per cent. interest thereon, from the time they became due until final payment, to wit: for $1,810 20, from 1 October, 1839, deducting one thousand dollars paid 1 July, 1841; for $1,249 56, from 15th October, 1839; for $903 87, from 19 November, 1839; for $910 95, from 1 December, 1839; for $632 86, from 16th December, 1839, with six dollars cost of protest and costs of suit; and your petitioner prays that said T. G. Chamberlin, the defendant, may answer under oath the annexed interrogatory, with all other relief the case may require.

Signed, ALFRED HENNEN,
*Att'y for petitioner.*

Interrogatory to be answered under oath by the defendant T. G. Chamberlin.

Did you not agree, in writing, to pay ten per cent. interest on the above specified notes, *for* the time they became due until final payment, and to pay the amount of the capital?

And on the 25th January, 1842, the following answer was filed:

ROBERT HEATH, surviving partner of S. Heath & Co.,
vs.
T. G. CHAMBERLIN.

Circuit court of the United States, eastern district of Louisiana.

T. G. Chamberlin, the defendant, denies all and singular the allegations of the petitioner, requires strict proof thereof, and prays to be hence dismissed, with costs.

Signed, B. W. GODFREY,
*Att'y for defendant.*

To interrogatory he answers in the affirmative.

Signed, T. G. CHAMBERLIN.

Sworn to and subscribed, before me, this 25th January, 1842.

Signed, DUNCAN N. HENNEN, *Clerk.*

And on the 25th January, 1842, the following judgment was rendered:

This cause came on this day by consent, Alfred Hennen, esquire, appearing for the plaintiffs, and B. W. Godfrey for the defendant, when the plaintiffs having fully made out their case, it was considered by the court that judgment be entered up in favor of the plaintiffs, S. Heath & Company, and against the defendant, True Gilman Chamberlin, for the sum of four thousand five hundred and six dollars and eighty-four cents, with interest of ten per centum per annum upon six hundred and thirty-two dollars and twenty-six cents thereof, from the sixteenth day of December, eighteen hundred and thirty-nine; upon nine hundred and ten dollars and ninety-five cents thereof, from the first day of December, eighteen hundred and thirty-nine; upon nine hundred and three dollars and eighty-seven cents thereof, from the nineteenth day of November, eighteen hundred and thirty-seven; upon twelve hundred and forty-nine dollars and fifty-six cents thereof, from the fifteenth day of October, eighteen hundred and thirty-nine; upon eighteen hundred and ten dollars and twenty cents thereof, from the first day of October, eighteen hundred and thirty-nine, until the first of July, eighteen hundred one; and upon eight hundred and ten dollars and twenty cents, from the said first day of July, eighteen hundred and forty-one, until paid; for six dollars, costs of protest and costs of suit.

Judgment entered 25th January, 1842; judgment signed 29th January, 1842.

Signed, THEO. H. McCALEB,
*U. S. judge.*

Received the notes and protests filed in this case.

(Signed,) R. HEATH.

Feb'y 2d, 1842.

I consent that this judgment, rendered herein on the 25th day of January, 1842, shall be signed on this 28th January, 1842.

(Signed,) T. G. CHAMBERLIN.

And on the 29th of January, 1842, the following fi. fa. was issued:

Circuit court of the United States, for the ninth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from True Gilman Chamberlin, the sum of four thousand five hundred and six dollars and eighty-four cents, with interest at ten per centum per annum, upon six hundred and thirty-two dollars and twenty-six cents thereof, from the sixteenth day of December, eighteen hundred and thirty-nine; upon nine hundred and ten dollars and ninety-five cents thereof, from the first day of December, eighteen hundred and thirty-nine; upon nine hundred and three dollars and eighty-seven cents thereof, from the nineteenth day of November, eighteen hundred and thirty-nine; upon twelve hundred

and forty-nine dollars and fifty-six cents thereof, from the fifteenth October, eighteen hundred and thirty-nine; upon eighteen hundred and ten dollars and twenty cents thereof, from the first day of October, eighteen hundred and thirty-nine, until the first day of July, eighteen hundred and forty-one; and upon eight hundred and ten dollars and twenty cents, from the said first of July, eighteen hundred and forty-one, until paid; for six dollars, costs of protest and costs of suit—cash, which S. Heath and company lately recovered, by judgment of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana; and if he shall not pay the same on demand, that then you cause the same to be made out of the personal estate of the said True Gilman Chamberlin, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of the said True Gilman Chamberlin, exclusive of slaves, cannot be found in your district, that then you cause the sum to be made out of the real estate and slaves of the said True Gilman Chamberlin, in your district, whereof he was owner, on the 25th day of January, 1842, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said S. Heath and company, for the judgment aforesaid, on the seventieth day from date, together with this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this 29th day of January, 1842, and sixty-sixth year of the Independence of the United States.

[L. S.]

(Signed,) DUNCAN N. HENNEN, *Clerk*.

Clerk's fees, $21 $\frac{16}{100}$.

New Orleans, 9th June, 1842.

The United States marshal will please not sell the property of T. G. Chamberlin until further notice.

(Signed,) S. HEATH & CO.

*Marshal's Return.*

January 29th, and on the same day I made demand of the amount of the within fi. fa., of the defendant, T. G. Chamberlin, who refused to pay the same, or to surrender property to satisfy this writ. I then seized the contents of a certain crockery store in the city of New Orleans, belonging to the said defendant, which, after due and legal notice, was sold, and the sale of the contents of said store not having produced an amount sufficient to satisfy one other certain writ of fieri facias issued from the said court, that this writ was at the suit of J. & J. Chamberlain vs. T. G. Chamberlain, No. 891, which last mentioned writ of fieri facias was levied upon said property, prior to the date of said seizure, made by virtue of this writ, there was nothing made from said sale to be credited on this writ, (all of which will more fully appear from the return made on the fi. fa. issued with the said case of J. & J. Chamberlin vs. T. G. Chamberlin.) I then proceeded, by directions of plaintiff's attornies, to seize, all and singular, three certain lots of ground, with the improvements thereon, situate in the rear of suburb Lafayette, in the parish of Jefferson

State of Louisiana, designated by numbers five, six and seven, on a particular plan, by Depouilly, surveyor, in January, 1835, said lots measuring sixty feet front on Jackson street, by one hundred and fifty feet in depth, between parallel lines, all American measure; and after giving the defendant three days' notice of said seizure, in writing, I advertised said property for sale, according to law, from the 10th May, 1842, to the 10th June, 1842, in the Jeffersonian, a newspaper published in the said parish of Jefferson; and after having had the before mentioned property appraised on the 9th day of June, 1842, the sale was stayed by order of plaintiffs, which order is hereto attached, and returned with this writ.

For A. SIDNEY ROBERTSON, *Marshal.*
J. P. WALDEN,
*Deputy United States Marshal.*

And on the 23d February, 1842, the following entry was entered of record, to wit:

Wednesday, Feb'y 23d, 1842.

S. HEATH & Co.
vs. } 896.
T. G. CHAMBERLIN.

J. & J. CHAMBERLIN,
vs. } 891.
T. G. CHAMBERLIN.

JOSEPH CHAMBERLIN,
vs. } 892.
T. G. CHAMBERLIN.

MOSES CHAMBERLAIN,
vs. } 893.
T. G. CHAMBERLIN.

On motion of A. Hennen, esquire, and on filing the written consent of the parties, plaintiffs ordered that the marshal of this court shew cause, on Thursday next, at ten o'clock, A. M., why the packages, cases and merchandise, which remain in kind unopened and unpacked, should not be delivered to the respective vendors, the plaintiffs, agreeably to the provisions of the act 3197 of the code.

And on the 24th of February, 1842, the following entry was entered of record, to wit:

Thursday, February 24th, 1842.

J. HEATH & Co.
vs. } No. 896.
T. G. CHAMBERLIN.

On motion of Elmore & King, of counsel for plaintiffs, it is ordered by the court, that the marshal shew cause, if any he has, on the 5th day of March next, why he should not pay over the proceeds of the sale of the property seized on the following executions, to wit: Moses Chamberlin vs T.

G. Chamberlin, Joseph Chamberlin vs. the same, and J. & J. Chamberlin vs. the same, to the said S. Heath & Co., upon the following grounds, to wit: that the seizure made by him in the cases of J. & J. Chamberlin, Moses Chamberlin and Joseph Chamberlin vs. T. G. Chamberlin, were made upon executions obtained in fraud of the rights of said S. Heath & Co., and that there is a proceeding now pending before this court against the said T. G. Chamberlin, under the bankrupt law, in which the validity of the said executions is at issue; and the marshal cannot legally pay over the said money to the said seizing creditors, until the validity of the seizures are tried; that said seizures are illegal and void, and confer no rights upon the plaintiffs, in whose favor they were made, but that the said S. Heath & Co. are entitled to the same. And further, that all the parties to the above named suits be notified of this rule.

Marshal's return thereon. Received Feb'y 28th, 1842, and same day served copies of the within on A. Hennen, esquire, and A. S. Robertson, U. S. marshal, in person, and on B. M. Godfrey, by handing the same to A. Hennen, esq., who accepted service of the same.

(Signed,) A. SIDNEY ROBERTSON,
*U. S. Marshal.*
By WM. K. STILES,
*Deputy U. S. Marshal.*

And on the 8th of December, 1842, the following entry was entered of record, to wit:

R. HEATH, surviving partner of S. Heath & Co.
vs.
T. G. CHAMBERLIN.

On motion of King, esquire, of counsel for plaintiff, it is ordered the plaintiff have leave to file his supplemental petition in this case.

The following supplemental petition was filed 8th Dec'r, 1842:

R. HEATH, surviving partner,
vs.
T. G. CHAMBERLIN. } No. 896.

To the honorable the judges of the circuit court of the United States, for the ninth judicial circuit, holding sessions at the city of New Orleans, in and for the eastern district of Louisiana:

In the suit now in this court, in which Robert Heath, as surviving partner of S. Heath & Co. is plaintiff, and True Gilman Chamberlain is defendant, and of this docket suit No. 896, the plaintiff files this supplemental petition, and respectfully represents—

That for the security of the debts on which judgment was rendered in this case, and signed on the 29th of January, 1842, he held a mortgage upon certain property, more fully described in the annexed act; that on or about the tenth of June, 1836, the said firm of S. Heath &

Co. gave a letter of credit to the said T. G. Chamberlin, on the house of Messrs. Burton, Heath & Company, in Liverpool, England, a copy of which said letter is hereto annexed; that in order to secure S. Heath & Co. from any loss or liability incurred by them in consequence of said letter, the said Chamberlin executed in their favor the act of mortgage above referred to, and hereunto annexed; that the said T. G. Chamberlin did use the letter of credit, and made extensive purchases under it, for which S. Heath & Co. were liable; that in consequence of the said liability, they settled with B. Heath & Co. for the goods purchased by Chamberlin as aforesaid; that in settlement with them for the sums paid by them, on his account, Chamberlin executed to them the notes, on which said judgment was rendered in this case, and that the said notes were given in consequence of the liability incurred by S. Heath & Co., on account of the said letter of credit. Petitioner alleges that said judgment has never yet been paid, and that a right *and that a right* of mortgage exists upon the property mentioned in the above named act for the payment of the said judgment, and that the property should be sold to satisfy the said judgment to the amount of the mortgage, to wit, for the sum of five thousand dollars.

Wherefore, petitioner prays that the defendant be cited to answer this petition, and that after all due proceedings had, the court do order said property to be seized and sold to satisfy the judgments heretofore recovered in this case, to the amount of five thousand dollars, and for all other relief in the premises, &c.

Signed, ELMORE & KING,
*Atty's for pet'r.*

NEW ORLEANS, 10*th June*, 1836.

Messrs. Burton, Heath, & Co.

DEAR SIRS: This is a letter of credit to Mr. Chamberlin, of the firm of T. G. Chamberlin & Co., earthenware and china dealers in this city, who visits England for the purpose of purchasing goods, in his line of business, and his given with the understanding, that he make use of no other credit, and that all the goods he purchases shall be shipped through you, to our order, except the first shipment, which must not exceed $1,500, to be forwarded to Messrs. C. direct. This credit is to extend to $2,000 per month, commencing from the first shipment; observing that whatever may have been shipped in conformity with orders already forwarded, must be deducted from this letter of credit, and continue till further advised at Mr. C's option. The credit is to be used by your paying for goods, and expenses on them according to Mr. C's order, and you will charge 5 p. c. commission on the whole amount; but it is understood, that you are not to pay more than the market value of any invoice, and that the amount shipped, to arrive before 1st November, shall not exceed $1,500. Yours, truly.

Signed, R. HEATH & Co.

Mortgage dated 8th June, from T. G. Chamberlin to S. Heath & Co.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known, that this day before me, Hilary Breton Cenas, a notary public, in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared True Gilman Chamberlin of this city, who declared that, whereas Messrs. S. Heath and company, of this city, merchants, have furnished him with a letter of credit on Mrs. Burton, Heath and company, o Liverpool, England, in order to enable him, the said appearer, to purchase goods in his line of business; and whereas he, the said appearer, may in the course of the said purchase, have occasion to avail himself of the said letter of credit up to the amount of five thousand dollars; now, therefore, in consideration of the premises, and in order to secure to the said S. Heath & Co., the full re-payment and reimbursement of any and all sum or sums, which he, the said appearer, may have occasion to use under the letter aforesaid, within the said amount of five thousand dollars, as well as against any and all risk, damage, loss, or detriment, whatsoever, which they might sustain by or through the letter by them furnished as above; he, the said appearer, moreover declared, that he does by these presents mortgage, and specially hypothecate unto the said firm of Heath & Co., the same being composed of Sherman Heath and Robert Heath, and herein represented by the said Sherman Heath, present, and accepting for and in behalf of his said firm, all and singular three certain lots of ground, with the improvements thereon, situate in the rear of suburb Lafayette, in the parish of Jefferson, in this State, designated as numbers five, six, and seven, on a particular plan drawn by De Pouilly, surveyor, in January, 1835, and deposited in this office, and measuring each sixty feet front on Jackson street, by a depth of one hundred and fifty feet between parallel lines, to the dividing line of lot number "ten," in the rear, all American measure, which said lots are the same which the said mortgager acquired by purchase from Thomas Toby, syndic of the creditors of John H. Martinstein, by an act passed before me, the said notary, on the fifth day of May, eighteen hundred and thirty-five; and which said lots of ground, he, the said mortgagor promises, and accordingly hereby binds and obligates himself, not to alienate or encumber, to the prejudice of this mortgage. By reference to the annexed certificate of the parish judge, and ex-officio recorder of mortgages, in and for the said parish of Jefferson, dated this day, it will appear there is no other mortgage standing in the name of the said T. G. Chamberlin, and recorded against the said described property, than the one he granted by a clause in his said act of purchase, in favor of his said vendor, to secure the sum of four hundred and fifty-two dollars, being the amount of three certain promissory notes by him granted, in part payment of the said property.

This done and passed, in my office at the city of New Orleans, in the presence of Joseph J. Wicks and Robert Taylor, witnesses of lawful age, and domiciliated in this city, who hereunto subscribe their names,

together with the said parties, and me the said notary, this eighth day of June, in the year of our Lord one thousand eight hundred and thirty-six.

Original signed, T. G. CHAMBERLIN,
SHERMAN HEATH.
H. B. CENAS, *Not. Pub.*

J. J. WICKES,
R. TAYLOR.

I certify the foregoing to be a true copy of the original act extant in my register. In faith whereof, I grant these presents, under [SEAL.] my signature, and the impress of my seal of office, the eighth day of June, eighteen hundred and thirty-six.

Signed, H. B. CENAS, *Not. Pub.*

And on the 8th of December, 1842, the following answer was filed:

To the honorable the judges of the circuit court of the ninth judicial circuit of the United States, holding sessions *of* the city of New Orleans, in and for the eastern district of Louisiana.

To the petition filed in this court, on the 8th day of December, by R. Heath, surviving partner of S. Heath & Co., against T. G. Chamberlin, the defendant appears, and for answer says, that he admits the allegations contained in the plaintiff's petition are true, and is willing the property mortgaged may be sold to satisfy the mortgaged debt as prayed for by petitioner, and that the court decide on it instanter.

Signed, T. G. CHAMBERLIN.

Witness—H. B. PAGE, *D'y Cl'k.*

And on the 8th December, 1842, the following judgment was rendered, to wit:

R. HEATH, surviving partner, & Co.,
vs.
T. G. CHAMBERLIN. } No. 896.

This cause being submitted by consent of parties, the court considering the answer of the defendant as an admission of the rights of the plaintiff's demand, hereby orders and decrees that the property mentioned in the mortgage annexed to the plaintiff's supplemental petition, to wit, all and singular three lots of ground, with the improvements thereon, situated in the rear of the suburb Lafayette, in the parish of Jefferson, in this State, and designated as numbers five, six, and seven, on a plan drawn by De Poully, surveyor, and deposited in the office of H. B. Cenas, notary public, and measuring each sixty feet front on Jackson street, by a depth of one hundred and fifty feet, between parallel lines, to the dividing line of lot number ten, in the rear, all American measure, be seized, and sold, to satisfy the judgment recovered by the plaintiff in this case on the 29th of January, 1842, for the sum of $4,500 84, with interest at the rate of ten per cent. per annum, on $632 26, from December 16th, 1839; on $910 95 from December 1st, 1839; on $903 87,

from November 19, 1839; on $1,249 50, from Oct'r 15, 1839; on $1,810 20, from Oct'r 1st, 1839, until July 1st, 1841, and on $810, from July 1st, 1841, until paid. The proceeds of the property to be applied to the said judgment to the amount of five thousand dollars, should the property sell for so much.

Judgment entered December 8th, 1842.

Signed, December 15th, 1842.

Signed, THEO. H. McCALEB,
*U. S. Judge.*

And on the 15th December, 1842, the following order of seizure and sale issued, to wit:

UNITED STATES OF AMERICA:

R. HEATH, surviving partner of S. Heath & Co., vs. TRUE G. CHAMBERLIN. } No. 896.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to seize and sell, after legal demand, for cash, the following property, to wit: All and singular three lots of ground, with the improvements thereon, situate in the rear of the suburb Lafayette, in the parish of Jefferson, in this State, and designated as numbers 5, 6, and 7, on a plan drawn by De Poully, surveyor, and deposited in the office of H. B. Cenas, notary public, and measuring each sixty feet front on Jackson street, with a depth of one hundred and fifty feet, between parallel lines, to the dividing line of lot number ten, in the rear, all American measure, to satisfy the plaintiff, R. Heath, of the sum of $4,506 84, with interest at the rate of ten per cent. per annum; on $632 26, from December 16th, 1839; on $910 95, from December 1st, 1839; on $903 87, from 19th, 1839; on $1,249 50, from October 15th, 1839; on $1,810 20, from October 1st, 1839, until July 1st, 1841; and on $810, from July 1st, 1841, until paid, and for costs of suit.

Clerk's costs, $42 83
Marshal's costs,

And what you do in the premises you make due return thereof, together with this writ, to our said court, on the 1st Monday of January next.

Witness the honorable R. B. Taney, chief justice of the Supreme [SEAL.] Court of the United States, this 15th December, A. D. 1842, and of the independence of the United States the 67th year.

DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *Deputy Clerk.*

Marshal's return. Received, December 15th, 1842, and after making diligent search and enquiry, I could not find the defendant, T. G. Cham-

berlin, to demand the amount due by him to plaintiffs; I then seized the property described in the body of this writ, viz: All and singular three lots of ground, with the improvements thereon, situate in the rear of the suburb Lafayette, in the parish of Jefferson, in this State, and designated as numbers 5, 6, and 7, on a plan drawn by De Poully, surveyor, and deposited in the office of H. B. Cenas, notary public, and measuring each sixty feet front on Jackson street, with a depth of one hundred and fifty feet, between parallel lines, to the dividing line of lot number ten, in the rear, all American measure; and after giving the defendant, T. G. Chamberlin, three days' notice, in writing, of the seizure of said property, by posting said notice on the court house door, and advertising said property for sale in the French and English languages, in the Constitution, a newspaper published in the city of Lafayette, in the parish of Jefferson, and the New Orleans Republican, a paper published in the city and parish of New Orleans, from the 24th day of December, 1842, to the 28th day of January, 1843, announcing that the sale of said property would take place on the 28th of January, 1843, at the hour of 12 o'clock, M., at the Lafayette exchange, in the city of Lafayette, at the corner of Jackson and Levee streets; and after having the said property duly appraised, and the appraisers having valued the said property at the sum of five hundred dollars, cash, for each of said lots, I exposed the same to public sale, according to law, at the time and place specified in said advertisements, when, having described the above mentioned property, and after having read, in an audible voice, the certificate of the recorder of mortgages for this said parish of Jefferson, shewing the amount of mortgages existing on said property, (which certificate of mortgage is herewith returned,) and after duly crying the before described property, there was no sale, for the want of a bid to the amount of the two-thirds of the appraised value of the same, and the sale having been, in consequence thereof, postponed for fifteen days, counting from the date of the fresh notice, that was given in the same manner, in all respects, as that of the first sale, announcing that the property would be sold, on a credit of twelve months, for what it would bring, on the 18th day of February, 1843, at the hour of 12 o'clock, M., at the place designated for the first sale, and that the purchaser would be required to give good and sufficient security, with special mortgage on the property sold, until final payment, bearing interest at the rate of ten per cent. per annum, that being the interest allowed by the judgment; and on the said 18th day of February, 1843, at the place and hour aforesaid, having exposed the said property to public sale the second time, payable at twelve months' credit as aforesaid, and after having again read the before mentioned certificate of mortgages, and after duly crying the said property, Robert Heath, surviving partner of S. Heath & Co., became the purchaser thereof for the price of two hundred and ten dollars (210) for each of the before described lots of ground, he being the highest and last bidder, making, in all, the sum of six hundred and thirty dollars, ($630;) and the said Robert Heath being entitled, as plaintiff, to the proceeds of said

sale, retained the amount of said purchase money in his hands, in part satisfaction of this writ.

For A. SIDNEY ROBERTSON,
*U. S. marshal.*
J. P. WALDEN,
*Deputy U. S. marshal.*

And on the 27th January, 1843, the following entry was entered of record, to wit:

Friday, January 27th, 1843.

R. HEATH, surviving partner of S. Heath & Co.,
vs.
T. G. CHAMBERLIN. } No. 896.

On motion of F. H. Upton, esquire, of counsel for H. Q. Ferguson, it is ordered, that the plaintiffs shew cause to-morrow, Saturday, at 11 o'clock, A. M., why an injunction should not forthwith issue, directing the United States marshal to desist from the sale of the property seized and advertised to be sold by him at 12 M., on the ground that the said Herbert Q. Ferguson is the third possessor of said property, and, as such, he has a right to the institution of the hypothecary action against him, that he may have an opportunity of disproving the pretended claim of R. Heath or S. Heath & Co., under the mortgage alleged to have been given them by the said T. G. Chamberlin.

Marshal's return. Received January 27th, 1843, and on the same day, I served a copy of the within on Elmore and King, esquires, at New Orleans.

(Signed) A. SIDNEY ROBERTSON,
*U. S. Marshal.*
By GEO. W. GWINN,
*Deputy U. S. Marshal.*

And on the 16th February, 1843, the following entry was entered of record, to wit: Thursday, 16th February, 1843.

R. HEATH, surviving partner, &c.
vs.
T. G. CHAMBERLIN. } No. 896.

On motion of Francis H. Upton, of counsel for H. Q. Ferguson, it is ordered by the court that the plaintiffs shew cause on Saturday next, the 18th inst., at ten o'clock, A. M., why an injunction should not issue herein, directing the marshal to desist from the sale of the property advertised to be sold by him at 12 o'clock, M., of said day, upon the fi. fa. which issued upon the judgment recovered on the supplemental petition filed herein; and that the further execution of said judgment be stayed on the ground that the said H. Q. Ferguson is the third possessor of said property, and as such has a right to the institution of the hypothecary action against him, that he may have an opportunity of disproving the pretended claim under the mortgage alleged to have been given by the defendant.

Marshal's return. Received, 16th February, 1843, and on the same day, I served a copy of the within order of court on W. A. Elmore, esq., one of the atty's of the plaintiff, in person, at New Orleans.

(Signed) GEO. W. GWIN,
*Deputy U. S. Marshal.*
For A. SIDNEY ROBERTSON,
*U. S. Marshal.*

And on the 17th February, 1843, the following entry was entered of record, to wit: February, Friday 18th, 1843.

ROBERT HEATH, surviving partner,
vs.
T. G. CHAMBERLIN. } No. 896.

The rule taken in this suit, on the complainants, to shew cause why an injunction should not issue, returnable this came on for trial; F. H. Upton, esquire, appearing for H. Q. Ferguson, plaintiff, in the rule, and Elmore, esquire, for the complainant, in this suit; whereupon, after argument, the court took the case under advisement.

*Marshal's receipt.*

J. & J. CHAMBERLIN,
vs.
T. G. CHAMBERLIN.

In the circuit court of the United States, eastern district of Louisiana.

Received of A. Sidney Robertson, U. S. marshal, three thousand dollars in a *specie check*, on the Union Bank of La., on account of satisfaction of a writ of fi. fa. issued in the above entitled suit.

(Signed) ALFRED HENNEN, *Att'y for Plff's.*

MARSHAL'S OFFICE, *New Orleans, Nov. 25th*, 1844.

I certify the foregoing to be a true copy of the original receipt of record in my office.

(Signed) A. SIDNEY ROBERTSON,
*U. S. Marshal.*
By J. P. WALDEN,
*Deputy U S. Marshal.*

Further testimony offered by complainant on 26th June, 1843.

*Certificate of the clerk of the court.*

The testimony of A. S. Robertson, U. S. marshal, was taken in open court in the commercial court of New Orleans, in the case of Paul Tulane vs. T. G. Chamberlin and others, on the 14th day of May, 1842, suit 5,032.

New Orleans, 26th June, 1843.

Signed, ED. GARDEN, *Clerk.*

*Admissions of defendants' solicitor.*

R. HEATH
vs.
J. & J. CHAMBERLIN et al.

Admissions made during the trial in this case.

It is admitted that the return of the marshal, made in the case of R. Heath vs. T. G. Chamberlin, offered in evidence in this case, is incorrect in stating that the money received by him on the sale of T. G. Chamberlin's store, was paid over *of* J. & J. Chamberlin; he, in fact, having paid over to them only three thousand dollars, the balance being still in his hands. That Mr. Hennen did pay over to J. & J. Chamberlin the amount in his hands, as ordered by the court, June 9th, 1842.

*Statement of W. W. King, esquire.*

W. W. King states, that after the sale of T. G. Chamberlin's goods by the marshal, he met Mr. Robinson, who told him that J. Chamberlin and Mr. Hennen, his attorney, had been trying to prevail on him to pay over the money to them; this was only a few days [after] the sale; witness told the marshal not to think of paying over the money, that, by doing so, he would make himself liable in case J. & J. Chamberlin, or J. Chamberlin, were not entitled to the money; besides, he would disobey the injunction then pending against him at the suit of Cartledge. Witness further told the marshal there were various claims against the said money, among them Mr. Heath's, of which the marshal was aware. That it was the intention of these parties to contest to the last the right of the Chamberlins to this money; that, by paying it over, he would be improperly favoring parties to suits before the court; that it was his duty to hold on to the money until the rights of these persons were passed upon. The marshal replied that he had refused to pay over the money, as he had been requested, and that he would not do so until the rights of the partners were settled. Witness told the marshal that, if he paid over the money at that time, he might impair or defeat the rights of the other parties; that he had then a good and sufficient legal reason for not paying it over; that whenever it became necessary, Heath intended taking such steps as would prevent his paying it over. The marshal then promised witness that he would not pay it over, and would not, at any time, pay the money over without giving witness notice, so that Heath should have an opportunity of stopping it in his hands, and of testing his right to it.

Witness is confident that this conversation took place before the 16th of April, 1842. That witness was acting at the time as counsel for Heath, and was particularly interested in the subject; that afterwards he had repeated conversations with the marshal upon this subject, and that the marshal always gave him the most positive assurances that he would not pay over the money until he was compelled to.

That at the time the rule was tried against the marshal, taken by J. & J. Chamberlin to make him pay over the money to them, and it was decided he should do so, witness told the marshal that, by law, ten days

were allowed for an appeal from that decision; that Heath had the right to appeal, and would probably do so; that, at all events, he intended stopping the money in his hands, and would take out an injunction if necessary; that one of the two he would certainly do before ten days were out. The marshal assured the witness that he would not pay over the money, especially without giving him timely notice of it. That before the ten days expired, after the marshal had been ordered to pay over the money, to wit, on 26th of April, Mr. Heath took out the injunction now before the court. At *that* time the injunction was taken out by Mr. Heath, witness had not a doubt or suspicion as to the money being in the hands of the marshal. Some time after the injunction had been taken out by Mr. Heath, witness was informed that a portion of the money received by the marshal from the sale of the goods, to wit, about three thousand dollars, was in the hands of Mr. Hennen; that he was greatly surprised at this, and went immediately to the marshal to ascertain the truth of the report. The marshal informed him that it was true. He then expressed warmly his disapprobation of the conduct of the marshal in this matter, reminded him of his repeated promises which he had violated, and told him that he feared difficulty would grow out of it, and that Heath would hold him liable for the money if he could do so. The marshal said he never regretted having done any thing so much in his life; that he had been so beset by the Chamberlins he did not know what to do. During the whole time which elapsed from the sale of the goods, up to the time of filing the injunction by Heath, he saw the marshal almost daily; that he frequently conversed with him upon this business, in fact almost every time he saw him; that he repeatedly cautioned the marshal against paying over the money, and warned him against the arts that would be resorted to to induce him to do so. That the marshal never once intimated to him that he had paid over any portion of this money; on the contrary, always promised witness he would not pay it over without giving him notice.

Signed, WM. W. KING.

Sworn to and subscribed, before me, this 24th June, 1843.

Signed, D. N. HENNEN,
By H. B. PAGE,
*Deputy clerk.*

And on the 17th November, 1843, the following decree was rendered, to wit:

R. HEATH,
vs.
J. & J. CHAMBERLIN, T. G. CHAMBERLIN, MOSES CHAMBERLIN, & JOSEPH CHAMBERLIN. } No. 956. Bill in equity.

The court having maturely considered this case, do now order, adjudge, and decree, that the several judgments obtained by J. &. J. Chamberlin, and Moses Chamberlin, against the defendant, T. G. Chamberlin, be annulled and set aside, so far as they affect the rights of the com-

plainant in this cause. And it appearing from the evidence that Joseph Chamberlin and Jacob Chamberlin have received, of the money in the hands of the marshal, the sum of three thousand dollars, and the court being of opinion that they are not entitled to it, but that it justly and equitably belongs to the complainant, it is further ordered, adjudged, and decreed, that the said J. & J. Chamberlin be condemned, *in solido*, to pay to the plaintiff the said sum of three thousand dollars. It is further ordered, adjudged, and decreed, that the injunction granted in this case be made perpetual, that the marshal do pay over to the complainant the amount of the proceeds of the sale of property held by him at the time the said injunction was served upon him, the sum of two hundred and nineteen dollars of the amount so held by the marshal being due the complainant under the vendor's privilege. It is further ordered, adjudged, and decreed, that the costs of this suit be paid by defendants.

Judgment entered 17th November, 1843; judgment signed 23rd November, 1843.

Signed, THEO. H. McCALEB,
*U. S. judge.*

*Opinion of the court.*

R. HEATH, complainant,
vs.
J. & J. CHAMBERLIN & al. } In equity.

I have attentively considered the pleadings and evidence in this case, and the conclusion to which I have come will be briefly stated. I am fully satisfied that the judgments obtained by J. & J. Chamberlin and Moses Chamberlin, against their brother, T. G. Chamberlin, are fraudulent. The circumstances under which they are obtained are yet fresh in my recollection. They were attentively considered in the suit instituted in the suit against T. G. Chamberlin, in bankruptcy, to have him declared a bankrupt. So far as related to T. G. Chamberlin, I do not believe that the matter could admit of a doubt. Upon hearing the argument of defendant's counsel in this cause, I confess that I entertained strong doubts how far the fraud could be imputed to the defendants, J. & J. Chamberlin and Moses Chamberlin, who, in their answer, responsive to the allegations of the bill, declare, that they were not present in this city when the judgments were obtained. These doubts, are, however, dispelled, when I take into consideration the plain principle of law, that the acts of their counsel must necessarily be regarded as their own acts. They admit that they appeared in court, by the attorney, through whose agency the judgments were obtained, and, so far from disowning or repudiating his acts, they have clearly ratified and acknowledged them, and sought to have profited by them. It is not sufficient to say that Heath cannot allege, as fraudulent, the very act which he himself committed. The situation of Heath and that of the Chamberlins, is widely different. The latter are the brothers of T. G. Chamberlin, and the strongest presumption arises from this fact, that from the circumstances under which the proceedings, from judgment to execution, were urged

through the court, that the parties, plaintiffs and defendant, were mutually striving to get the property of the latter beyond the reach of other creditors. Besides, the judgments in favor of the Chamberlins were prior to that in favor of Heath, and it is not surprising that the latter, upon becoming aware of the dilemma in which he was placed, should have promptly availed himself of the willingness of T. G. Chamberlin to confess a judgment in his favor. This, with him, was a dernier resort. He does not, then, appear to me in the light of one who has endeavored to defraud others, but of one who reposed too much confidence in the honesty of T. G. Chamberlin, by whom he seems to have been deceived by promises, until the brothers were in a fair way to get that property which ought, from the first, to have been regarded, as the law regards it, the common pledge of all the creditors of the insolvent; for it is quite clear that T. G. Chamberlain was insolvent at the time judgments were confessed, and it is equally clear that the facts of his insolvency must have been known to his brothers.

It is therefore ordered, adjudged, and decreed, that the several judgments obtained by J. & J. Chamberlin & Moses Chamberlin against the defendant, T. G. Chamberlin, be annulled and set aside, so far as they affect the rights of the complainant in this cause. And it appearing from the evidence, that Joseph Chamberlin and Jacob Chamberlin have received of the money in the hands of the marshal, the sum of three thousand dollars, and the court being of opinion that they are not entitled to it, but that it justly and equitably belongs to the complainant, it is further ordered, adjudged, and decreed, that the said J. & J. Chamberlin be condemned, *in solido*, to pay to the plaintiff the said sum of three thousand dollars. It is further ordered, adjudged, and decreed, that the injunction, granted in this case, be made perpetual; that the marshal do pay over to the complainant the amount of the proceeds of the sale of property held by him at the time the said injunction was served upon him, the sum of two hundred and nineteen dollars, the amount so held by the marshal being due the complainant under the vendor's privilege.

It is further ordered, adjudged, and decreed, that the costs of this suit be paid by defendants.

And on the 4th of December, 1843, the following petition of appeal was filed:

R. Heath et als.
vs.
J. & J. Chamberlin et als.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana.

The petition of appeal of Joseph Chamberlin and Jacob Chamberlin, merchants, in partnership, under the firm of J. & J. Chamberlain, respectfully sets forth, that petitioners are informed that there is error in the decree lately pronounced by this honorable court, in the matter of R. Heath et als. vs. J. & J. Chamberlin, et als., on the equity side of the

court, so far as the same affects the rights of petitioners. Wherefore petitioners pray that an appeal be granted them from the decree aforesaid, to the Supreme Court of the United States, upon their complying with the conditions of the law.

(Signed,) JOHN CLAIBORNE,
*Solicitor for respondents.*

*Judge's order.*

Let the prayer of the within petition be granted, on complying with the requisitions of the law.

(Signed,) THEO. H. McCALEB,
*United States judge.*

And on the 4th day of December, 1843, the following entry was entered of record, to wit:

*Monday, 4th December*, 1843.

R. HEATH, & al.
vs.
J. & J. CHAMBERLIN, & als. } No. 956. In equity.

On motion of J. Claiborne, solicitor for J. & J. Chamberlin, respondents, it is ordered that complainants do shew cause, on Saturday next, the 9th December, instant, at 10 o'clock, A. M., why additional time should not be allowed the said respondents, who reside in the city of New York, to file the bond required by law, in case of appeal from the decree herein before rendered.

*Marshal's return.*

Received, December 6th, 1843, and same day served a copy of the within rule on Messrs. Elmore & King, at their office, in Exchange place.

(Signed,) A. SIDNEY ROBERTSON,
*United States marshal.*
By WM. K. STILES,
*Deputy U. S. M.*

And on the 8th December, 1843, the following entry was entered of record, to wit:

FRIDAY, *8th December*, 1843.

R. HEATH,
vs.
J. & J. CHAMBERLIN & al.

The rule, heretofore taken by the defendants upon the plaintiff, to shew cause why additional time should not be granted to file their appeal bond, came on to-day to be heard. J. Claiborne, esquire, for plaintiffs in rule, and King for defendants in rule; whereupon, after argument of counsel, it is ordered that the said rule be dismissed.

And afterwards, to wit, on the 5th June, 1844, the following *order of appeal* was endorsed on the petition of appeal filed, 4th Dec'r, 1843:

Let an appeal be granted in this as prayed for, on the appellants entering into bond and security for costs of appeal, with R. J. Palfrey, under a penalty of five hundred dollars, returnable at the next January term, 1845.

Signed, THEO. H. McCALEB, *U. S. Judge.*

And on 5th June, 1844, the following bond was filed:

R. HEATH, vs. J. & J. CHAMBERLIN & al. } No. 956.

Bond for writ of appeal.

Know all men by these presents, that we, Jacob Chamberlin and Joseph Chamberlin, as principals, Robert J. Palfrey, as surety, are held and firmly bound unto Robert Heath, in his individual capacity, and as surviving partner of the late firm of S. Heath & Co., and as agent of the representatives of S. Heath & Co., who composed, with the said R. Heath, the firm of S. Heath & Co.; the said representatives being Mary Heath, senior, Henry Heath, Edward Heath, Mary Heath, jr., Fanny Heath, J. R. Masterman, wife of John Masterman, John C. Heath, Ellen Heath, George Heath, and William Heath, who, with R. Heath, are the sole heirs of the said S. Heath, deceased, in the full and just sum of five hundred dollars, to be paid to the said R. Heath, in his capacity as aforesaid, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this fifth day of June, in the year of our Lord one thousand eight hundred and forty-four. Whereas lately, at a court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein R. Heath is plaintiff, and J. & J. Chamberlin, T. G. Chamberlin, Moses Chamberlin, and Joseph Chamberlin, judgment was rendered against the said Joseph Chamberlin and Jacob Chamberlin, defendants; and the said Joseph Chamberlin and Jacob Chamberlin having obtained a writ of appeal, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said R. Heath for himself and in his capacity aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of January next. Now, the condition of the above obligation is such that, if the said Joseph Chamberlin and Jacob Chamberlin shall prosecute their writ to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Signed, JACOB CHAMBERLIN, [L. S.]
JOSEPH CHAMBERLIN, [L. S.]
By their att'y J. APPLETON JEWETT.
A. J. PALFREY. [L. S.]

Sealed and delivered in the presence of—
Signed, CH. BOURCEIR.

And on the 3d February, 1844, the following entry was entered of record, to wit:

*Saturday*, 3*d Feb'y*, 1844.

R. HEATH,
vs.
J. & J. CHAMBERLIN, and als. } No. 956. In equity.

On motion of Elmore & King, of counsel for the plaintiffs, and upon filing the affidavit of R. Heath, it is ordered by the court, that A. Sidney Robertson, the marshal of this court, shew cause, if any he has, on Saturday, the 10th day of February instant, at ten o'clock, A. M., why he should not pay over, in conformity with the decree of this court, rendered in the above case, the sum of four thousand six hundred dollars, to the plaintiff in this case, the said sum being the amount which he is liable to pay plaintiff.

*Marshal's return.*

Received, 3d Feb'y, 1844, and same day served a copy of the within rule on A. Sidney Robertson, U. S. marshal, in person.

(Signed,) WM. K. STILES,
*D. U. S. Marshal.*

And on the 3d February, 1844, the following affidavit of R. Heath was filed:

R. HEATH,
vs.
J. & J. CHAMBERLIN, et al.

Robert Heath being duly sworn, states, that he has made application to A. S. Robertson, the marshal of the United States circuit court, demanding of him the payment over of the money in his hands, according to the decree of this court, in the case of R. Heath vs. T. G. Chamberlin et al., rendered on the 17th day of November, 1843; that he demanded of the said marshal the sum of four thousand six hundred dollars, the costs being deducted therefrom, considering he was entitled to that sum. The said marshal had paid the sum of $935 67, in cash, $181 00, costs of suit, and refused positively to pay any further sum on account of said decree.

(Signed,) R. HEATH.

Sworn to and subscribed before me this 3d Feb'y, 1844.

For D. N. HENNEN, *Clerk.*
J. Q. A. HOIT, *Deputy Clerk.*

And on the 10th February, 1844, the following entry was entered of record, to wit:

*Saturday*, 10*th February.*

R. HEATH,
vs.
CHAMBERLIN and als. } No. 956.

The rule taken by the complainant in this case on the marshal, came up this day for hearing; when, after evidence being adduced, and argument of counsel, the court took the same under advisement.

And on the 27th February, 1844, the following decree of the court was rendered:

Circuit court of the United States.

HEATH, vs. CHAMBERLIN.

A rule has been taken in this case by the counsel for the plaintiff, on the marshal of this court, to shew cause why he should not pay over, in conformity with the decree of this court, the sum of $4,600 to the said plaintiff, the said sum being the amount which he is liable to pay. An attentive examination of dates has satisfied my mind that the marshal is not liable for the amount claimed in the rule. Under executions issued from this court, a certain sum of money was realized and held by the marshal, subject to the claims of several judgments and privileged creditors of T. G. Chamberlin, against whose property the executions had issued. On the 23rd April, 1842, Alfred Hennen, esquire, as counsel of J. & J. Chamberlin, judgment creditors, at whose suit the executions issued, took a rule upon the marshal, to shew cause why he should not pay over the money in his hands, and received under the execution, to J. & J. Chamberlin. On the 25th April, two days after the rule was entered, the marshal answers that he does not pay over the money, because there are other claims against the money put in by Tulane & Heath, and asks that they, as parties in interest, have notice of the rule. Both Tulane & Heath accordingly appeared on the day the rule was tried, that is, on the 20th of April, 1842, and were dismissed, after argument at length, on the ground that the court could exercise no jurisdiction over them personally. There was then no other claimant than J. & J. Chamberlain regularly before the court, and the money was consequently ordered to be paid over to them. On the 27th of April, 1842, Alfred Hennen, esquire, again took his rule upon the marshal, to shew cause why process should not issue against him, for a contempt, in not obeying the order of court, directing him to pay over to J. & J. Chamberlain the money in his hands. This rule was based upon the affidavit of Mr. Hennen, which also bears date the 27th April, 1842, the same day on which he took his rule. No trial ever took place on the rule, because, as we may reasonably conclude, the object of the plaintiffs in the rule was fully obtained, by a compliance on the part of the marshal, with the order of *the order of* court already rendered.

The affidavit of Mr. Hennen, taken *ex parte*, can by no means be conclusive against the marshal, who had no opportunity of a cross-examination. If, as that affidavit shows, the whole amount of money was in the hands of the marshal, it could certainly be regarded only as *constructively* in his hands, since it has been well established, that a portion

of the sum received under the execution had been paid over to Hennen on the 16th of April, 1842. There was nothing however to exempt the marshal from liability to any one who had a right to claim the money, until the order of the 26th of April was given. Up to that period he had no right to pay the amount. The receipt of Hennen, which bears no date, but which it is well established was given on the 16th of April, was a matter entirely between the marshal and Hennen, and did not for a moment change the liability of the former to other persons. If he chose to confide the custody of the money to Mr. Hennen, he did so at his own risk. But the order of the 26th of April, subsequently rendered, was a sufficient authority to him to permit the money to remain where he had placed it. A payment to Hennen was a good payment to J. & J. Chamberlin, and the contest which afterwards took place between Hennen and his clients, under the rule taken by the latter, through Messrs. Grymes & Claiborne, was a matter with which the marshal certainly had nothing to do. His responsibility ceased after the order of the 26th of April.

The question then recurs, how does the plaintiff in this rule expect to hold the marshal responsible for the money? Because, as he contends it was paid to the counsel of J. & J. Chamberlin, *in violation of the injunction* which issued at the suit of Heath vs. T. Chamberlin. This cannot be; Heath was entirely out of court at the time the money was paid, and he did not come back within the jurisdiction of the court until the 2nd of May, 1842, when he filed his bill in equity. The injunction which issued in accordance with the prayer of that bill, was served upon the marshal on the 3*d of March*, 1842, six days after the dismissal of Heath's intervention, and the order of the court to pay the money to J. & J. Chamberlin; and also five days after the *affidavit of Hennen*, relied upon by the plaintiff in the rule, was filed. It is clear, then, that no injunction was violated by the marshal, and he is consequently responsible only for that portion of the money which he admits was in his hands after the injunction was served upon him. This amount he must pay over to the plaintiff, in the rule, after deducting his legal fees.

With the promise made from time to time by the marshal, to the counsel of Heath before the injunction issued, I have nothing to do, in deciding upon the legal merits of the question presented under this rule. They cannot certainly affect the rights of third persons who were regularly litigating their rights before the court. Whatever may have been his promise to hold on to the money, the order of the court could not be disregarded. It is therefore ordered, adjudged, and decreed, that the rule taken in this case be dismissed.

Clerk's office, circuit court of the United States, fifth circuit, and eastern district of Louisiana:

I, Duncan N. Hennen, clerk of the circuit court of the United States for the fifth circuit, in and for the eastern district of Louisiana, do hereby certify that the foregoing one hundred and three pages contain a full, faithful, and true transcript of the record and proceedings, together with

all the evidence adduced on the trial of the case of Robert Heath vs. J. & J. Chamberlin, T. G. Chamberlin, Moses Chamberlin, and Joseph Chamberlin, No. 956, of the records of the said court, so far as the same now remains on file in this office.

In testimony whereof, I have hereunto signed my name, and affixed the seal of the said court, at the city of New Orleans, [L. S.] this 28th day of November, A. D. 1844, and 69th year of the independence of the United States.

For D. N. HENNEN, *Clerk.*
J. Q. A. HOIT, *Deputy Clerk.*

I, Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, and one of the judges of the circuit court, in and for the fifth circuit and eastern district of Louisiana, do hereby certify, that Duncan N. Hennen, is the clerk of the circuit court aforesaid, and that J. Q. A. Hoit, who signed the foregoing certificate, is the deputy clerk, and was at the time of so doing, and that due faith and credit are due, and ought to be given, to his acts as such, and that the above certificate is in due form of law.

Witness my hand and seal this 28th day of November, A. D. 1844.

THEO. H. McCALEB, [SEAL.]
*Dist. Judge U. S. Court, E. D. La.*

*Citation of Appeal.*

THE UNITED STATES OF AMERICA,

To Robert Heath, in his individual capacity, and as surviving partner of the late firm of S. Heath & Co., and as agent of the representatives of S. Heath, deceased, who composed, with said R. Heath, the firm of S. Heath & Co., the said representatives being Mary Heath, sen'r, Henry Heath, Edward Heath, Mary Heath, jun'r, Fanny Heath, J. R. Masterman, wife of John Masterman, John C. Heath, Ellen Heath, George Heath, who, together with Robert Heath, are the sole heirs of the said S. Heath, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of January next, pursuant to a writ of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Joseph Chamberlin and Jacob Chamberlin are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said writ of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fifth day of June, in the year [L. S.] of our Lord one thousand eight hundred and forty-four.

THEO. H. McCALEB, *U. S. Judge.*

[Endorsed] Marshal's return. Received June 6th, 1844, and on the 7th day of the same month, I served a copy of the within citation of appeal on R. Heath in person at New Orleans.

For A. SIDNEY ROBERTSON, *Marshal*,
J. P. WALDEN, *Deputy Marshal.*

*Writ of appeal.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Robert Heath, in his individual capacity, and as surviving partner of the late firm of S. Heath & Co., and as agent of the representatives of S. Heath, deceased, who composed, with said R. Heath, the firm of S. Heath & Co., the said representatives being Mary Heath, sen'r, Henry Heath, Mary Heath, jun'r, Fanny Heath, J. R. Masterman, wife of John Masterman, John C. Heath, Ellen Heath, George Heath, who, together with Robert Heath, are the sole heirs of the said S. Heath, deceased, and Joseph Chamberlin, and Jacob Chamberlin, and Moses Chamberlin, and T. G. Chamberlin, and Joseph Chamberlin, a manifest error hath happened, to the great damage of the said Joseph Chamberlin and Jacob Chamberlin, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of the said Supreme Court of the United States, this fifth of June, in the year of our Lord one thousand eight hundred and forty-four.

[SEAL.]

For D. N. HENNEN,
*Clerk of the United States Circuit Court and Eastern District of Louisiana.*

J. Q. A. HOIT, *Deputy clerk.*

[Endorsed.] Copy of the writ of appeal lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, in pursuance of the statute in such cases made and provided, this fifth day of June, 1844.

*Attorney for appellants.*

Filed, 13th Dec'r, 1844.